

Panaji, 20th April, 2017 (Chaitra 30, 1939)

SERIES II No. 3

# OFFICIAL GOVERNMENT OF GOA GAZETTE



PUBLISHED BY AUTHORITY

## GOVERNMENT OF GOA

Department of Education, Art &amp; Culture

Directorate of Higher Education

### Order

No. 8/5/2016-DHE/169

Read: Memorandum No. 8/5/2016-DHE/2695 dated 21-12-2016.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/78(6)/2016/449 dated 08-12-2016, Government is pleased to appoint Dr. Rajesh Ramnath Parvatkar (OBC) to the post of Assistant Professor in Organic Chemistry in Government College under Directorate of Higher Education on temporary basis in the Pay Band-3, Rs. 15,600-39,100+Grade Pay of Rs. 6,000/- (pre-revised) with effect from commencement of new Academic Year 2017-18 and as per the terms and conditions contained in the Memorandum cited above.

Dr. Rajesh Ramnath Parvatkar shall be on probation for a period of two years.

Dr. Rajesh Ramnath Parvatkar has been declared medically fit by the Medical Board. His character and antecedents have been verified by the District Magistrate, North Goa District, Panaji and nothing adverse has come to the notice of the Government.

Consequent upon appointment, the transfer and posting of the following Assistant Professor in the Department of Chemistry is hereby ordered:-

Sr. No.	Name of the officer	Place of present posting	Transferred at
1	2	3	4
1.	Dr. Rajesh Ramnath Parvatkar (OBC), Assistant Professor in	Awaiting posting	Government College of Arts, Science and Commerce, Sanquelim vice Ms. Asmita

1	2	3	4
Organic Chemistry			S. Naik Gaonkar, Assistant Professor in Chemistry (Organic) transferred.
2. Ms. Asmita S. Naik Gaonkar, Assistant Professor in Chemistry (Organic)	Government College of Arts, Science and Commerce, Sanquelim		Government College of Arts, Science and Commerce, Quepem against newly created post of Assistant Professor in Organic Chemistry-vide Order No. 21/1/2014-DHE/402 dated 13-05-2016.

By order and in the name of the Governor of Goa.

Diwan N. Rane, Under Secretary (Higher Education).

Porvorim, 13th April, 2017.

### Order

No. 8/5/2016-DHE/170

Read: Memorandum No. 8/5/2016-DHE/2696 dated 21-12-2016.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/78(7)/2016/444 dated 08-12-2016, Government is pleased to appoint Dr. Ashish Ramrai Naik to the post of Assistant Professor in Physical Chemistry in Government College under Directorate of Higher Education on temporary basis in the Pay Band-3, Rs. 15,600-39,100+Grade Pay of Rs. 6,000/- (pre-revised) with effect from commencement of new Academic Year 2017-18 and as per the terms and conditions contained in the Memorandum cited above.

Dr. Ashish Ramrai Naik is posted at Government College of Arts, Science and Commerce, Quepem-Goa.

Dr. Ashish Ramrai Naik shall be on probation for a period of two years.

Dr. Ashish Ramrai Naik has been declared medically fit by the Medical Board. His character and antecedents have been verified by the District Magistrate, South Goa District, Margao and nothing adverse has come to the notice of the Government.

The above appointment is made against the vacancy occurred due to creation of one post of Assistant Professor in Physical Chemistry in Government College of Arts, Science and Commerce, Quepem-Goa vide Order No. 21/2/2014-DHE/402 dated 13-05-2016.

By order and in the name of the Governor of Goa.

*Diwan N. Rane*, Under Secretary (Higher Education).

Porvorim, 13th April, 2017.

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### Department of Civil Supplies and Consumer Affairs

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#### Order

No. DCS/ADCS/114/2010-CSD/2017-18/6

In view of the expiry of the term of Shri Jayant S. Prabhu, President, Consumer Disputes Redressal District Forum, South Goa on 15-04-2017, Shri Sanjay M. Chodankar, President of Consumer Disputes Redressal District Forum, North Goa, is ordered to look after the charge of President of Consumer Disputes Redressal District Forum, South Goa as additional charge till the filling up of vacancy of the President on wholetime basis.

Shri Sanjay M. Chodankar, President of North Goa District Forum, shall attend South-Goa District Forum for two days i.e. Tuesday and Thursday of the week and shall be eligible for T.A./D.A. as per rules in force.

This is issued with the approval of the Government.

By order and in the name of the Governor of Goa.

*Mahesh V. Corjuenkar*, Director & ex officio Joint Secretary (Civil Supplies & Consumer Affairs).

Panaji, 13th April, 2017.

#### Order

No. DCS/ADCS/114/2010-CSD/2017-18/7

The tenure of Mrs. Savita Kurtarkar, Women Member, Consumer Dispute Redressal District Forum, South Goa and Mrs. Varsha Bale, Women Member, Consumer Dispute Redressal District Forum, North Goa expires on 15-04-2017 and 16-04-2017 respectively. However they are ordered to continue as a Member of the same Forums till the completion of process of filling up of vacancies of members on wholetime basis.

This is issued with the approval of Government.

By order and in the name of the Governor of Goa.

*Mahesh V. Corjuenkar*, Director & ex officio Joint Secretary (Civil Supplies & Consumer Affairs).

Panaji, 13th April, 2017.

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### Department of Finance

#### Debt Management Division

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#### Notification

No. 2/8/2012-FIN(DMU)/562

In pursuance to Clause 17 & 18 of the Articles of Association of Goa State Infrastructure Development Corporation Limited (GSIDC); Government of Goa is pleased to re-constitute the Board of Directors of GSIDC Ltd., with the following nominees with immediate effect:-

1. Shri Deepak Prabhu Pauskar, — Director.  
Sanvordem
2. Finance Secretary or his — Director.  
nominee not below the rank  
of Under Secretary from  
Finance Department
3. Managing Director, GSIDC — Director.  
Limited

Government is further pleased to nominate Shri Deepak Prabhu Pauskar as Chairman of GSIDC Limited.

This issues in supersession of all earlier Notifications issued in this regards.

By order and in the name of the Governor of Goa.

*Bevinda Monteiro e Dias*, Under Secretary (Bud-II).

Porvorim, 13th April, 2017.

## Department of Fisheries

Directorate of Fisheries

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Notification

No. FSH/PLG/B.R. SLSC/2016-17

The Ministry of Agriculture, Department of Animal Husbandry Dairying and Fisheries, Government of India has initiated Blue Revolution: Integrated Management and Development of Fisheries. In accordance with F. No. 31013/37/2016-Fy(3) Pt. 5 a State Level Steering Committee is to be constituted under the chairmanship of Chief Secretary for effective implementation, monitoring and timely intervention of Blue Revolution Schemes. The Committee will attend the policy issues enabling environment for the growth of the Fisheries sector in the State.

Accordingly, the Government of Goa hereby constitute the State Level Steering Committee (SLSC) comprising of following composition:

**Composition of SLSC**

- 1) Chief Secretary of the State—Chairman.
- 2) Secretary, Fisheries of the State—Member.
- 3) Secretary, Finance—Member.
- 4) Joint Secretary, Finance—Member.
- 5) Director of Fisheries—Member Secretary.

**Functions of SLSC**

- 1) SLSC to discuss the status of Fisheries Development in the State for realising goals of Blue Revolution.
- 2) Review of policy issues related to Fisheries Development in the State.
- 3) SLSC will have the oversight of State Action Plan.
- 4) Review convergence of funds from other Schemes.
- 5) Review of funds transfer position to districts.
- 6) Recommending the proposals prepared by the State/State action plan.
- 7) Review of progress of the implementation of Blue Revolution projects.

This notification shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

Dr. (Smt.) *Shamila Monteiro*, Director & ex officio Joint Secretary (Fisheries).

Panaji, 11th April, 2017.

## Department of Home

Home—General Division

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Standing Order

No. 19/17/2013-HD(G)/46

In pursuance of Rule 17 of the Rules of Business of the Government of Goa, 1991, I, Shri Manohar Parrikar, Chief Minister/Home Minister, Government of Goa, hereby direct that the Secretary (Home) to the Government of Goa shall hear and dispose of the appeals filed under Section 18 of the Arms Act, 1959 (54 of 1959) read with Rule 5 of the Arms Rules, 1962.

This Standing Order shall come into force with immediate effect.

*Manohar Parrikar*, Chief Minister/Home Minister.

Porvorim, 17th April, 2017.

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Department of Labour—  
Notification

No. 28/9/2017-LAB/226

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 15-03-2017 in reference No. C-IT/4/98 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Georgina Saldanha*, Under Secretary (Labour).

Porvorim, 10th April, 2017.

IN THE INDUSTRIAL TRIBUNAL AND  
LABOUR COURT  
GOVERNMENT OF GOA  
AT PANAJI

(Before **Mr. Vincent D'Silva**, Hon'ble Presiding Officer)

Case No. C-IT/4/98

1. The Goa MRF Employees' Union,  
"Saidham", Dhavlimol,  
P. O. Keulem, Ponda-Goa. ... Complainant No.1
2. Shri Rohidas Naik,  
'Saidham', Dhavlimol,  
P. O. Keulem,  
Ponda, Goa-403 401. ... Complainant No. 2

V/s

1. M/s. MRF Ltd.,  
Tisk, Usgaon, Goa. ... Respondent No.1

2. The Goa MRF Employees Union,  
Rep. by its President,  
Savio Furtado, Sikerkar Building,  
Uppar Bazar, Nr. Vithoba  
Temple, Ponda-Goa. ... Respondent No. 2

Complainant No. 1 represented by Ld. Adv. Shri V. Menezes.

Respondent No. 1 represented by Ld. Adv. Shri G. K. Sardessai.

Respondent No. 2 represented by Ld. Adv. Shri M. S. Bandodkar.

#### AWARD

(Delivered on this the 15th day of the month of  
March of the year 2017)

This is a complaint filed under Section 33-A of the Industrial Disputes Act, 1947.

2. In short, the case of the Complainant No. 1 is that the Complainant is a Trade Union registered under Trade Unions Act and represents an overwhelming majority of the workmen employed with Respondent No. 1 at its factory at Ponda. The Respondent No.1 is a company having its factory in Goa and is engaged in the manufacture and sale of tyres. The Respondent No.1 employs about 970 workmen for its business at its factory in Ponda. The complainant in its capacity of sole bargaining agent by letter dated 15-2-1996 served its Charter of Demands on the Respondent No. 1 in respect of conditions of service of the workmen of the Respondent No. 1. The Respondent No. 1 under letter dated 7-2-1996 forwarded its counter Charter of Demands. Negotiations were thereafter held and since the same could not culminate into a settlement due to the stand taken by the Respondent No.1, the Complainant by letter dated 29-8-1996 called upon the Labour Commissioner to intervene in the dispute and to commence conciliation proceedings.

3. The Complainant also forward a Justification statement along with a letter dated 29-8-1996. Thereafter, by letter dated 7-9-1996, the Assistant Labour Commissioner, Ponda informed the complainant and the Respondent No.1 that he would be holding discussions and the conciliation proceedings were initiated. The Respondent No.1 was absent on 14-10-1996 before the Conciliation Officer and the proceedings were adjourned. Thereafter, by letter dated 17-10-1996, the Conciliation Officer forwarded the Minutes of the meetings and called upon the parties to be present before him failing which the dispute would be closed. Both the parties appeared before the Conciliation Officer on 24-10-1996 however, the

Respondent No. 1 took up hyper-technical stands. On 28-10-1996, the impasse continued and the Conciliation Officer realizing that no amicable settlement is possible closed the proceedings. The conciliation proceedings having come to an end by the failure being recorded by the said Conciliation Officer, the failure report ought to have been forwarded to the appropriate Government for a reference.

4. The Labour Commissioner however by letter dated 15-11-1996 sought to intervene in the matter and called the parties before him on 21-11-1996 on the purport of holding discussions in respect of Charter of demands served by the Complainant on the Respondent No. 1. The Complainant was kept shunting between the office of the Labour Commissioner and the office of Government of Goa and there was no need of whatsoever for delaying the reference on the purport of the file being sent to the Government of Goa. The Complainant was unduly suffering by the concerted efforts of the Labour Commissioner and the Respondent No. 1, ad-idem to delay the final adjudication by the Tribunal pursuant to a reference by the appropriate Government. The Labour Commissioner did not have any jurisdiction to hold the discussion on a dispute which had already ended in a failure before the Conciliation Officer. The Complainant was constrained to file the Writ Petition before the Hon'ble High Court which was disposed of as reference under Section 10 was made which is pending before the Tribunal.

5. The Respondent No.1 in an attempt to break the unity of the Union started illegally changing the service conditions of the workmen to their prejudice and accordingly by letter dated 20-8-1997 the Respondent No.1 was called upon not to change the conditions of service of the workmen. The changes in service conditions are as under:

- a) The workmen working in the Bladder Fixing Department, which operates on a Sunday work pattern (includes Sundays) are transferred to Band Building Department which has a 6 day working pattern (excludes Sundays).
- b) The workmen who have been transferred to the Band Building Department have been orally directed to report on Sundays for work inspite of the same being a six day working Department with a Sunday holiday.
- c) One Shri Piedade Travaso was issued a warning for not reporting to work as per the illegal change imposed on the workmen.
- d) The misconducts are governed under the Certified Standing Orders of the establishment and accordingly the



- aforesaid Standing Orders are part of the service conditions of the workmen.
- e) The Respondent vide notice dated 03-09-1997 illegally changed the service conditions by increasing the misconducts therein and the punishment thereon.
  - f) In the previous settlements only a few Departments were seven day running Department, the company is however now running the entire factory in the seven day system without any notice of change whatsoever or without seeking the permission of the Tribunal.
  - g) Not only is the seven day running system is imposed on all Departments in the factory, but workmen of the Leave Reserve Department who are being sent to the hitherto 6 day running Department with Sunday off have been called to report for work on Sundays.
  - h) In the past service conditions applicable to the workmen restrained the Respondent from unilaterally transferring workmen from one Department to another and that the same was done only after discussions with the Union pursuant to an application from the workmen for such transfer. In many of the cases the piece rate was as per the production of the entire Department and workmen of that Department have been illegally and malafidely transferred to Departments where the piece rate depends entirely on the individual performance of the workmen. A negligible period of 21 days is given to familiarize the workmen with the production in the transferred Department and having worked for a number of years in other Departments, their piece rate, inspite of all genuine attempts, is affected.
  - i) The transfers are imposed further to open the workmen to disciplinary action inter-alia, on the ground of slow work when the Respondent is well aware that working in a new Department is bound to affect the production level of the workmen.
  - j) The shifting of the weekly off from Sunday and changing 6 day working Departments to seven day running Department is adversely affecting the workmen in as much as the workmen are losing 3 days wages per week depending upon the weekly off imposed on them.
  - k) In the 48" Calendar Department the process followed in 6" tuber of reliever at meal time was discontinued unilaterally by the management.
  - l) From 20th July onwards the usual and long standing practice of helpers carrying the moving table plant in the Band Building Department for repairs was discontinued unilaterally and the same has been sought to be made condition of service of operators in the Band Building Department.
  - m) New jobs have been created unilaterally and assigned jobs are being changed unilaterally.
  - n) Workmen are being transferred and/or posted in new Departments and/or posts unilaterally and to their prejudice, inter-alia, on contravention of long standing practice and in contravention of their conditions of service.
  - o) That out of 16 mechanics in their Boiler House Department, 4 helpers and 6 mechanics are sought to be placed in the Machine Shop Department and/or Generator room which jobs were hitherto done by Engineering helpers.
  - p) That the posts are being abolished unilaterally by the management.
  - q) That new machines are being installed changing the process of manufacturing and new jobs are being assigned to the workmen.
6. The Complainant therefore prayed to declare that the Respondent No.1 has illegally changed the service conditions of the workmen and to call upon the Respondent No.1 to cease and desist from changing the service conditions and not to implement the seven day running system on the Departments hitherto run on six day with Sunday off system.
7. In reply at Exhibit 2, the Respondent No. 1 has stated that the application under Section 33-A has been made by the Union and not by the workmen and therefore it is not maintainable. The Respondent No.1 submitted a Charter of demands dated 15-2-1996 spelling out the demands of the management and the said letter was served on Complainant prior to the submissions on the Charter of demands on the management by the Complainant. The negotiations on Charter of demands commenced on 23-5-1996 and continued on 1-6-1996, 8-6-1996, 24-7-1996, 29-6-1996, 31-7-1996, 5-8-1996, 7-8-1996 and 13-8-1996 wherein modalities to be adopted for the negotiations on the Charter of demands were discussed. The Complainant adopted an adamant attitude and chose to raise the dispute to the Labour

Commissioner. The Union refused to budge from the adamant stand that the whooping amount will increase the liability of a weighted average of Rs. 40,000/- per workmen per month was justified. The Assistant Labour Commissioner requested both the parties to review their stands.

8. The Respondent No. 1 never changed the service conditions of the workmen to their prejudice. The conditions of service of its workmen are clearly and specifically defined in the appointment order of the workmen concerned and the Certified Standing Orders of the company as applicable to the workmen. There is no change in the service conditions of the workmen who have been transferred from Bladder Fixing Department to Band Building Department. The workmen who are working in Bladder Fixing Department and who are doing the job which has been graded as 5 by the Industries Engineering Department were transferred to Band Building Department where the job is also graded as 5 as per the study grade by the Industries Department. There is no change in the earnings of the workmen so transferred or in the weekly off of the workmen transferred from Bladder Fixing Department to Band Building Department.

9. The shift notice displayed on the company's notice board clearly specifies the shift which the workmen is required to work in and also the weekly off day that is applicable to them. Shri Piedade Travasso was issued a letter dated 8-10-1997 for unauthorised entry into the factory on 6-10-1997 and 7-10-1997 and the disciplinary action taken was as per the Certified Standing Orders of the company. Certain Departments under the Settlement dated 2-5-1985 are being run on 7 day running system and some of the Departments are run on Sundays and holidays to train new recruits who need training and expertise in running such Departments. The workmen attached to Leave Reserve Department are required to relieve workmen in any of the Department irrespective of whether they are relieving workmen in the regular seven day Department or those Departments which run regularly on six days a week only except when required otherwise. The workmen attached to Leave Reserve Department are assigned jobs in the seven days running Department whenever jobs are available. The transfer of a workman from one Department or from one unit to another or from one branch to another or from one section to another is at the discretion of the Manager and is provided for in the Certified Standing Orders of the company, the appointment order of the workmen concerned

and the service conditions of the workmen. The transfer are being given to the workmen on need base irrespective of their affiliation to the different Union existing in the factory.

10. The transfer of workmen from one Department to another whether from an individual job or crew job or vice-versa has always been a practice at the factory. The workmen who have been transferred from one Department to another have been achieving normal productivity within the time specified for familiarization with the job by the Industrial Engineering Department and have been achieving their normal earnings, if not higher earnings. Only certain Departments approved in the Settlement dated 2-5-1984 are run on seven day running system. There has been absolutely no change in the conditions of service of any workmen which require a notice under Section 9-A of the Industrial Disputes Act. The transfers, if any of workmen in the factory have been effected as per the provisions and in accordance with the terms of contract of the appointment order of the workmen concerned as well as the provisions of Standing Orders of the company.

11. It is a matter of record that the Respondent No. 1 filed an application for amendment which was granted as per Order dated 16-7-2013 according to which the Settlement dated 20-11-1991 was signed between the management and the workmen represented by GMEU and the said Union was the only Union in operation in the company. The settlement expired on 30-09-1995 and subsequent thereto, the GMEU vide their letter dated 29-07-1995 terminated the said settlement and submitted a Charter of demands dated 15-02-1996. The subject matter of Charter of demands was thereafter raised by the Union before the Conciliation Officer. The conciliation deemed failed and the matter was referred to the Industrial Tribunal for adjudication by the State Government which was registered as reference No. IT/33/97.

12. It is also claimed that in August 1996, a section of workforce unhappy with the functioning of the GMEU organized themselves into a new Union named Goa MRF Union. The GMU submitted a Charter of demands dated 11-9-1996 on the management. Pursuant to a protracted negotiation on the said Charter of demands, finally a settlement was arrived at under Section 2(p) read with Section 18(1) of the Industrial Disputes Act on 14-4-2001 with GMU. The settlement was operative from 1-10-1995 to 30-9-1998 and from 1-10-1998 to 30-9-2002. The benefits of the settlement were to be extended to all the workmen irrespective of

their affiliation to the Union subject to such workmen giving an undertaking as spelt out in the settlement that they shall abide by the settlement. The management also displayed a notice on the notice board dated 16-4-2001 informing the workmen that the settlement shall be extended to such of the workmen who give an undertaking in the manner spelt out in the schedule to the settlement. The members of Union whose Charter of demands was pending adjudication did not accept the benefits of the settlement.

13. The Settlement dated 14-4-2001 expired. The members of the GMEU in the meanwhile elected a committee represented by one Shri Savio Furtado as the President. The GMU and GMEU represented by Shri Savio Furtado formed a Co-ordination Committee with a view to raise a common Charter of demands. The Co-ordination Committee by a letter dated 24-7-2002 submitted a Charter of demands and after a series of discussion with the management arrived at a settlement. The said settlement was arrived at before the Conciliation Officer under Section 12(3) of the Industrial Disputes Act on 30-11-2002. The settlement being a settlement under Section 12(3) was extended to all the workmen. The benefits of the settlement were received by all the workmen of the company irrespective of their Union affiliation. All the workmen were fitted in the appropriate category in the new settlement and the corresponding increase as provided in the settlement was extended to them. The wages of all the employees of the company without any difference were corresponding to the Settlement dated 30-11-2002.

14. It is also the case of the Respondent No. 1 that after the expiry of the Settlement dated 30-11-2002 by letter dated 15-07-2006 Co-ordination Committee raised a Charter of demands. The management and the Co-ordination Committee after a series of negotiations signed a settlement in conciliation on 27-11-2006. The benefits of the settlement were extended to all the workmen. The benefits of the settlement were received by all the workmen of the company irrespective of their Union affiliation. All the workmen were fitted into the appropriate category in the new settlement and the corresponding increase as provided in the settlement was extended to them. The wages of all the employees of the company were therefore and without any difference were corresponding to the Settlement dated 27-11-2006.

15. The Goa MRF Union submitted a separate Charter of demands after expiry of settlement dated 27-11-2006 which was followed by the settlement

dated 6-4-2011 signed by the Co-ordination Committee comprising of GMEU and majority of members who resigned from the membership of GMU. The allegations in the complaint are covered by the settlements dated 14-4-2001, 30-11-2002, 27-11-2006 and 6-4-2011 and the said settlements are binding on Complainants and therefore the complaint does not survive and required to be rejected or in the alternative, an award be passed in terms of the settlements.

16. It is a matter of record that the Respondent No. 1 filed an application for amendment which was granted as per Order dated 12-1-2015 according to which as per the Bye-laws of Complainant only those persons who are in employment of Respondent No.1 company are eligible to become members of complainant Union and continue as such till termination or retirement or superannuation or resignation. The Respondent No. 1 by application dated 5-9-2013 applied for information under Right to Information Act for the details of the application for amendment of Bye-laws of the complainant Union and the action taken by Registrar of Trade Unions in the matter. The Respondent No. 1 was furnished the information on the subject matter that the request made by GMEU for amending Para 3 of the Bye-laws has not been allowed. Shri Rohidas Naik who claims to be the President of Complainant Union reached the age of superannuation/retirement on March, 2012 and as per the Bye-laws only those persons who were in employment of Respondent No.1 company could become members of the Union and therefore Shri Rohidas Naik is not competent to act on behalf of the complainant or sign pleadings or verify the same as the President of the Union or depose on behalf of the Union.

17. The Complainant No. 1 filed a rejoinder at Exhibit 3 denying the case put forth by Respondent No.1 in the written statement. It is stated that the application filed by the Union is not barred under Section 33-A nor does the Tribunal lack jurisdiction to grant interim relief. There is ex-facie violation of service conditions of the workmen. The workman Shri Piedade Travasso did not enter the factory unauthorisedly but reported for duty on the day/shift that he was supposed to according to his service conditions, however Respondent No.1 unilaterally changed his day/shift orally and consequently his service conditions and to victimize him issued a show cause notice. The Bladder Fixing Department has seven day week with a weekly off, while the Band Building Department has a six day run on Sundays and holidays to train new recruits.

18. It is a matter of record that the Respondent No. 2, Shri Savio Furtado was added as a party to the proceedings by Order dated 17-10-2011 at Exb. 33. The Respondent No. 2 thereafter filed a Written statement at Exb. 37 inter-alia contending that since the year 2000, he has been heading Complainant Union and no other committee is authorised to represent the Union. The GMEU represented by him has been negotiating on behalf of the workforce with Respondent No. 1 and had signed various Memorandum of Understandings and Settlements which are binding on the members of the Complainant. The Respondent No. 2 has been regularly filing its Annual Returns as required under the rules. A settlement was signed dated 20-11-1991 between the management and the workmen represented by GMEU and the said Union was the only Union in operation in the management. The settlement expired on 30-9-1995 and subsequently the GMEU terminated the said settlement and submitted a Charter of demands dated 15-2-1996 through its General Secretary, however the conciliation failed and the matter was referred to the Industrial Tribunal for adjudication as reference No. IT/33/97.

19. The Respondent No. 2 further claimed that the GMU was the Union existing since 1987. The Respondent No. 2 signed the settlement from 1-10-1987 to 30-9-1991 and thereafter a second settlement was signed from 1-10-1991 to 30-9-1995. Shri Rohidas Naik, the then President of GMU joined the membership of Mumbai Mazdoor Sabha and subsequently the members of the complainant called an Extra-Ordinary General Body Meeting in which new executive committee represented by Respondent No. 2 as President was formed who has been representing the Union in all the matters concerning the Union. All the terms of settlement were derived and based on past practices followed in previous settlements which are fair and reasonable and have neither been challenged by complainants on the grounds of fraud, coercion and reasonability. The service conditions are based on the Appointment Order of the Workmen Concerned, Certified Standing Orders and settlements between the workmen and Respondent No. 2 and there exists no legal dispute with the same as Shri Rohidas Naik was one of the signatories to the settlement and was aware of seven day working system. There is no change in service conditions of the workmen who have been transferred or in the earnings of the workmen nor it is prejudicial to the interest of the workmen transferred and weekly off is maintained as per the law through shift notices displayed on the notice board.

20. The Complainant No.1 filed a rejoinder at Exhibit 38 disputing the legality and fairness of the settlement dated 14-4-2001, 30-11-2002, 27-11-2006 and 6-4-2011 in terms of which the Respondent No. 1 claims that an award to be passed. The said settlements are neither just, fair and proper nor are they settlements in the eyes of law or binding on the workmen or arrived at with the authority of the workmen. The purported settlements are a product of fraud, coercion and obtained or signed by persons neither authorised nor empowered to represent the workmen and without any authority. The said settlements are not settlements as defined under the Industrial Disputes Act nor they have been executed in terms of the procedure laid down by law. None of the aforesaid settlements have been arrived at or negotiated or entered into by persons or representatives empowered or actually having the mandate to represent, by the majority of the workmen in the establishment.

21. The Complainant No. 1 further stated that the company has been indulging in unfair labour practices since the expiration of settlement dated 20-11-1991 by constantly luring and winning away workmen from the membership of the complainant or creating or attempting to create a split or division amongst various members of the workmen. None of the members of the purported negotiating committee in any of the so called settlements have the authorization of the Union or the members that they claim to represent. The workmen have also been forced to accept the purported settlements by threats of demotion, reduction of grade or punishment on cooked up charges, or under threats of being issued notices for disciplinary proceedings on false charges of misconduct. Shri Savio Furtado posing to be President of the Complainant No. 1 Union has never been elected or authorised by any of the members or workmen owing allegiance to the Complainant Union.

22. The Complainant No.1 also stated that said Savio Furtado has no authority to negotiate or represent any members of complainants, nor was he ever an elected representative of the Union. Shri Rohidas Naik was duly elected President of the Union prior to 1991 continuously and uninterruptedly till the present date and the committee headed by him was and is always empowered to represent the members of the complainant Union and the workmen in all negotiations. Mr. Rohidas Naik was consistently represented himself as duly elected President of the Union in all the matters including Suits, Writ Petitions, References, LPAs and Special Leave



Petitions before the Hon'ble Supreme Court without any of the above Courts or Tribunal holding that the said committee was not authorised by the workmen or members of the complainants. None of the terms of said settlements have been ever accepted by the workmen as benefits or otherwise. None of the members of the complainant Union resigned, either individually or enmasse from the complainant Union at any point of time, or at any meeting held on 19-12-1999.

23. It is a matter of record that the Complainant No. 2, Shri Rohidas Naik was added as party to the proceedings by Order dated 28-02-2017 at Exb. 356.

24. Issues framed at Exhibit 8 are as follows:

- (1) Whether the Union/Complainant proves that the Respondent changed the service conditions of the workmen in contravention of Sec. 33 of the I. D. Act, 1947?
- (2) Whether the Union/Complainant proves that the action of the Respondent in changing the service conditions of the workmen is illegal and unjustified?
- (3) Whether the Respondent proves that the application/complaint filed by the Union is not maintainable under Sec. 33-A of the I. D. Act, 1947?
- (4) Whether the workmen are entitled to any relief?
- (5) What Order/Award?

25. It is a matter of record that an additional issue was framed on 2-8-2013 at Exb. 57. It is as follows:

- (3A) Whether the Respondent No. 1 proves that the allegations/contentions in the complaint are covered by the Settlements dated 14-4-01, 30-11-02, 27-11-06 and 6-4-2011 and that such settlements are binding on the Complainant and therefore the complaint does not survive?

26. The Complainant examined Shri Rohidas Naik as their witness and produced on record his Affidavit-in-evidence dated 26-8-2013 at Exb. 65, a copy of letter dated 15-2-96 for COD along with COD dated 7-2-96 at Exb. 66 colly, list of points/issues proposed by the management at Exb. 67, a copy of Settlement dated 2-5-84 at Exb. 68, a copy of Settlement dated 18-01-88 at Exb. 69, a copy of Settlement dated 20-11-91 at Exb. 70, a copy of notice dated 4-8-98 by the General Manager of Respondent No.1 at Exb. 72, a copy of letter dated 3-8-98 to Respondent No.1 at Exb. 73, a copy

of notice dated 1-8-98 by H.R. Manager of Respondent No. 1 at Exb. 74, a copy of letter dated 3-9-98 by the workman to Respondent No. 1 at Exb. 75, a copy of letter dated 27-5-98 by Respondent No.1 to the Union at Exb. 76, a copy of letter dated 28-4-98 by the Union to Respondent No. 1 at Exb. 77.

27. Shri Rohidas Naik further produced on record a copy of letter dated 13-2-98 by the workers to Respondent No. 1 at Exb. 78, a copy of letter dated 18-7-98 by the Union to the Labour Minister at Exb. 79, a copy of letter dated 11-2-98 by the Union to Respondent No.1 at Exb. 80, a copy of letter dated 19-1-98 by the Union to Respondent No.1 at Exb. 81, a copy of letter dated 8-1-2000 to Mumbai Mazdoor Sabha at Exb. 82, a copy of letter dated 23-12-99 by Mumbai Mazdoor Sabha to Respondent No. 1 at Exb. 83, a copy of letter dated 30-12-99 by Mumbai Mazdoor Sabha to Respondent No. 1 at Exb. 84, copy of Order dated 8-3-06 in Civil Appeal No. 1007/2004 and Order dated 9-2-2004 in SLP 853/2004 at Exb. 85 colly, a copy of Order dated 2-5-03 in W.P. No. 106/99 at Exb. 86, a copy of Order dated 12-8-03 in LPA No. 5/03 at Exb. 87, a copy of record of W.P. No. 283/99 at Exb. 88, a copy of Order dated 21-2-04 in RCS 8/99/D at Exb. 89.

28. Shri Rohidas Naik also produced on record a copy of Floor Plan of Respondent No. 1 showing the machinery in the year 1997 and 2013 at Exb. 91 & 92 respectively, copies of Returns filed before the Registrar of Trade Unions from the year 1999 to the year ending Dec. 2012 at Exb. 93 colly, a copy of Order dated 7-8-02 at Exb. 94, a copy of Order dated 7-8-02 in MCA No. 127/97 at Exb. 95, a copy of Resolution/Authorization to Shri Rohidas Naik at Exb. 96, copy of attendance register of Annual General Meetings of GMEU from 1999 to 26-5-11 at Exb. 97 colly, a copy of Order dated 11-10-02 in RCS No. 8/99 D at Exb. 98, a copy of Judgment dated 7-3-13 of Supreme Court of India at Exb. 99, a copy of Bye-laws of Complainant including amendments from 1991 with Resolutions at Exb. 100 colly, a copy of COD dated 19-6-13 at Exb. 101, a copy of letter dated 10/12-9-96 from the office of ALC at Exb. 102, a copy of letter dated 19-9-96 from MRF Ltd. to ALC, Ponda at Exb. 103, a copy of letter dated 7-10-96 from ALC to both the parties at Exb. 104, a copy of letter dated 10-10-96 from MRF Ltd. to ALC, Ponda at Exb. 105, a copy of Minutes of Conciliation Proceedings dated 14-10-96 at Exb. 106, a copy of letter dated 17-10-96 from ALC to both the parties at Exb. 107, copies of Minutes of Conciliation Proceedings dated 24-10-96 and dated 28-10-96 at Exb. 108 and Exb. 109 respectively, a copy of letter dated 29-10-96 by ALC to Labour

Commissioner at Exb. 110, a copy of letter dated 15-11-96 by the Labour Commissioner to GMEU at Exb. 111, a copy of letter dated 14-1-97 from the Labour Commissioner to GMEU at Exb. 112, a copy of letter dated 11-2-97 by the Labour Commissioner at Exb. 113.

29. Shri Rohidas Naik further produced on record a copy of Order dated 9-6-97 of Hon'ble High Court in W.P. No. 135/97 at Exb. 114, a copy of application dated 30-7-07 by GMEU to Assistant Information Officer at Exb. 115, a copy of letter dated 13-8-07 by PIO to GMEU at Exb. 116, a copy of letter dated 21-8-07 from PIO to GMEU at Exb. 117, a copy of letter dated 6-9-07 by PIO to Shri George Oliveira with a copy of outward register at Exb. 118, a copy of letter dated 7-1-98 by GMEU to AIO at Exb. 119, a copy of Award dated 28-1-05 in reference No. IT/18/2003 at Exb. 120, a copy of All India Consumer Price Index at Exb. 121, a copy of Notification for fixation of minimum wages at Exb. 122, a copy of Order dated 25-2-13 in reference IT/21/12 at Exb. 123, a copy of records and proceedings in W.P. No. 208/2013 at Exb. 124, a copy of Order dated 26-3-13 of Hon'ble High Court in W.P. No. 208/2013 at Exb. 125, a copy of Revised chart of tyre sizes at Exb. 126, a copy of Settlement dated 12-5-04 in relation to Tiruvottiyur unit in Tamil Nadu at Exb. 127, copy of letters dated 5-8-09, 10-10-09, 27-10-09 and 15-11-10 by Goa MRF Union to MRF Ltd. at Exb. 128 to 131 respectively.

30. Shri Rohidas Naik further produced on record a copy of letter dated 20-9-97 to the Manager by GMEU at Exb. 132, a copy of letter dated 20-8-97 by Shri Savio Furtado to MRF Ltd. at Exb. 133, a copy of warning letter dated 8-10-97 by MRF Ltd., to Shri Piedade Travaso at Exb. 134, a copy of letter dated 11-12-97 by GMEU to MRF Ltd. at Exb. 135, a copy of letter dated 27-7-97 by Shri Babani Gaude and by Shri Eric Faleiro at Exb. 136, a copy of letter dated 4-7-97 by Shri Anand Naik and 5 others to MRF Ltd. at Exb. 137, a copy of reply to show-cause notice dated 19-8-97 by Shri Antonio Vaz to MRF Ltd. at Exb. 138, a copy of letter dated 28-4-97 by GMEU to MRF Ltd at Exb. 139, a copy of shift notice dated 28-11-88 by the Plant Personal Manager at Exb. 140, copy of letters dated 30-12-08 and 4-2-09 by Goa MRF Union to MRF Ltd. at Exb. 141 and 142 respectively, a copy of letter dated 29-8-96 to the Labour Commissioner at Exb. 147, a copy of letter dated 20-1-97 to Labour Commissioner at Exb. 148, a copy of notice dated 3-9-97 signed by George Ninan of Respondent No.1 at Exb. 149, a copy of notice dated 19-8-97 signed by Claudio Fernandes of Respondent No.1 at Exb. 150, copy of notice dated 7-10-97 to Shri Estevao

Fernandes by Respondent No.1 and his reply dated 11-10-97 at Exb. 151 colly, a copy of letter dated 28-4-97 to Respondent No.1 received by Shri E.M. Mathias at Exb. 152, copy of Order dated 3-2-86 of probationary appointment of Shri S. Akbar Basha along with encls. at Exb. 153 colly, a copy of letter dated 17-10-97 to Respondent No. 1 received by Shri George Ninan at Exb. 154, a copy of letter dated 6-6-97 to Respondent No.1 received by Shri Claudio Fernandes at Exb. 155.

31. Shri Rohidas Naik also produced on record a copy of Gazette dated 25-9-03 at Exb. 156, a copy of letter dated 7-1-2000 by MMS to Respondent No.1 at Exb. 157, copy of letters dated 16-3-2000, 10-4-2000 and 3-5-2000 signed by Shri Diago D'Souza at Exb. 158 colly, a copy of letter dated 30-12-99 about resignation of Rohidas Naik from Complainant Union at Exb. 159, copy of letter dated 17-2-03 written to the management in connection with Settlement dated 30-11-02 along with Resolution dated 26-1-03 at Exb. 161 colly, a copy of letter dated 18-02-05 written to the management in connection with Settlement dated 30-11-02 at Exb. 162, copy of letter dated 3-2-07 written to the management in connection with the report appeared in the daily Tarun Bharat at Exb. 163, a copy of letter dated 30-12-99 by MMS to Respondent No.1 at Exb. 164, a copy of letter dated 14-1-2000 by MMS to Respondent No. 1 to withdraw show cause notices/warnings at Exb. 165, a copy of Order dated 3-1-01 with respect to the action of the management in awarding punishment to the witness at Exb. 166, copy of records of five disputes at Exb. 167 colly, copy of letters dated 23-3-00 and 25-3-00 by MMS to Respondent No.1 along with annexures at Exb. 168 colly and 169 colly.

32. Shri Rohidas Naik also produced on record a copy of old Bye-laws of complainant at Exb. 170, a copy of appointment letter dated 31-3-77 of witness at Exb. 171, copies of notices as well as shift notices showing the staggered offs at Exb. 173, a copy of letter dated 23-1-03 issued by the ALC, Ponda at Exb. 174, a copy of reply dated 18-2-03 at Exb. 175, a copy of transcript notice dated 13-12-99 at Exb. 178, copy of reply dated 18-5-00 along with A/D card and postal slip at Exb. 179 colly, copies of extract showing the attendance of the workers in the meeting held on 19-12-99 at Exb. 187 colly, Affidavit-in-evidence at Exb. 199, a copy of letter dated 26-4-11 to MRF at Exb. 200, a copy of letter dated 25-4-11 to Labour Commissioner at Exb. 201, a copy of letter dated 28-12-02 to Shri P. Gaonkar of GMS at Exb. 202, copy of letters dated 30-12-02, 13-1-03 and 18-2-03 to ALC, Ponda at Exb. 203 to 205 respectively, a

copy of letter dated 2-3-03 by ALC, Ponda to MRF Ltd. at Exb. 206, a copy of letter dated 11-3-03 by MRF Ltd. to ALC, Ponda at Exb. 207, a copy of letter dated 11-4-03 by ALC, Ponda to GMEU at Exb. 208, a copy of letter dated 29-4-03 to ALC, Ponda at Exb. 209, a copy of notice dated 28-9-98 by GMEU at Exb. 210, a copy of Attendance Register of election on 2-10-98 at Exb. 211, a copy of letter dated 8-10-98 to MRF and Labour Commissioner at Exb. 212, a copy of notice dated 19-1-99 by GMEU at Exb. 213, a copy of Attendance register of election on 26-1-99 at Exb. 214, a copy of letter dated 28-1-99 to MRF and Labour Commissioner at Exb. 215.

33. Shri Rohidas Naik also produced on record a copy of letter dated 21-1-99 addressed by Savio Furtado at Exb. 220, Additional Affidavit-in-evidence of Shri Rohidas Naik at Exb. 235, a copy of the statement from the accounts of Respondent No. 1/FA transaction Disp. at Exb. 236, a copy of the form of an application for advance payment at Exb. 237, a copy of the payment advice dated 31-5-11 to Devendra Naik at Exb. 238, a copy of pay slip of Devendra Naik for May, 2011 at Exb. 239, a copy of the pass book entries of Mukund Gawde's Account at Exb. 240, a copy of pay slip of Mukund Gawde for the month of May, 2011 at Exb. 241, a copy of letter dated 5-9-96 by GMEU to MRF at Exb. 242, a copy of letter dated 9-9-96 by MRF to GMEU at Exb. 243, a copy of Minutes of Meeting between Complainant and Respondent No. 1 dated 25-3-94 at Exb. 244, a copy of Judgment dated 12-8-14 in W.P. No. 237/05 at Exb. 245, a copy of Judgment and Decree in R.C.S. No. 8/99/C at Exb. 246 and closed its case.

34. The Respondent No.1 examined Shri T. M. Kurian and Smt. Pratima Naik as their witnesses. Shri T. M. Kurian produced on record Affidavit-in-evidence at Exb. 248, copy of Settlements dated 16-10-76, 14-4-01, 30-11-02, 27-11-06, 6-4-11 at Exb. 249 to 253 respectively, Additional Affidavit-in-evidence at Exb. 271, a copy of letter dated 24-9-13 by PIO/DLC at Exb. 272 colly, a copy of Declaration/Undertaking of Shri Piedade Travasso at Exb. 273, a copy of Compromise Memorandum in A-IT/44/98 in the case of Shri Meghnath Tari at Exb. 274, a copy of letter dated 25-4-01 by the Labour Commissioner at Exb. 275, a copy of letter dated 29-6-99 of GMU at Exb. 277, a copy of Bye-laws of GMU along with Registration Certificate at Exb. 278 colly, Printed Booklet of the Settlement dated 14-4-01 at Exb. 279, a copy of Pay slips as well as Muster roll for the month of May, 2001 at Exb. 280 colly, copies of Pay slips at Exb. 281 colly, a copy of Resolution dated 4-3-97 at

Exb. 282, a copy of Letter dated 20-2-2000 regarding seven executive members who resigned from GMEU at Exb. 283, a copy of Letter 9-2-2000 at Exb. 290, a copy of Letter dated 20-1-2000 received from Shri A. Andrade at Exb. 291.

35. Shri T. M. Kurian also produced on record a copy of Oral Order dated 3-7-1998 in W.P. No. 350/1997 at Exb. 292, a copy of list showing the members of GMU on 14-4-01 at Exb. 295, copy of Muster rolls for the months from Oct. 95 to Dec. 95 of security at Exb. 297, copy of Muster rolls for the months from Oct. 95 to Dec. 97 of House Keeping Department at Exb. 298, copy of Muster rolls for the months from Oct. 95 to Dec. 95 for the Banbury, Tread Tuber, etc. at Exb. 299, copy of Muster rolls for the months from Jan. 96 to Aug. 96 for the Banbury, Tread Tuber, etc. at Exb. 300, copy of Muster rolls for the months from May 96 to Dec. 96 for the Bead, Tyre Bldg., etc. at Exb. 301, copy of Muster rolls for the months from Jan. 98 to Dec. 98 for the Banbury, Tread Tuber, etc. at Exb. 302, copy of Muster rolls for the months from Jan. 98 to Dec. 98 for Bead, Tyre Bldg, etc. at Exb. 303, copy of Muster rolls of all the workers for the month from Jan. 99 to April 99 at Exb. 304, May 99 to Aug. 99 at Exb. 305, Sept. 99 to Dec. 99 at Exb. 306, Jan. 2000 to April, 2000 at Exb. 307, May, 2000 to Aug. 2000 at Exb. 308 Sept. 2000 to Dec. 2000 at Exb. 309. Jan. 2001 to March, 2001 at Exb. 310.

36. Shri T. M. Kurian also produced on record copy of notice issued by the Tribunal in respect of LCC/14/2000 along with encl. at Exb. 311 colly, copies of News report on daily Rashtramat dated 16-4-01, Goa Times dated 18-4-01, Dainik Pudhari dated 16-4-01, Sanatan Prabhat dated 15-4-01, Weekender dated 15-4-01, Herald dated 15-4-01, Tarun Bharat dated 15-4-01 and Gomantak dated 15-4-01 at Exb. 315 colly, copy of Pay slips of confirmed workmen and probationers for the month of Oct. 2000 at Exb. 321, Nov. 2000 at Exb. 322, Dec. 2000 at Exb. 323, Jan. 2001 at Exb. 324, Feb. 2001 at Exb. 325, March 2001 at Exb. 326 and April 2001 at Exb. 327, a copy of letter dated 11-5-2000 at Exb. 331, a copy of notice dated 13-12-99 produced by Shri Savio Furtado at Exb. 332, a copy of Oral Order dated 2-12-14 of Hon'ble High Court of Bombay at Goa at Exb. 335, a copy of Order dated 31-01-15 of Hon'ble Supreme Court of India at Exb. 336, a copy of Order dated 28-7-15 of Hon'ble Supreme Court of India at Exb. 337, copies of All India Consumer Price Index from 1995 to 2002 at Exb. 345 colly, a copy of letter dated 22-5-2000 produced before the Labour Commissioner at Exb. 346, a copy of leave application card of Shri Rohidas Naik for the year 1999 at Exb. 350.



37. Heard arguments. Notes of Written arguments came to be placed on record by the parties.

38. My answer to the above issues is as follows:

- 1) Issue No. 1 ... In the Affirmative
- 2) Issue No. 2 ... In the Affirmative
- 3) Issue No. 3 ... In the Negative
- 4) Issue No. 4 ... In the Affirmative
- 5) Issue No. 5 ... As per final order

#### Additional issue

- 1) Issue No. 3A ... In the Negative

#### REASONS

39. Ld. Adv. Shri G. K. Sardessai and Ld. Adv. Shri M. S. Bandodkar for the Respondent No. 1 and 2 respectively have taken objection to the maintainability of the complaint under Section 33-A of the Industrial Disputes Act, 1947, so also Ld. Adv. Shri G. K. Sardessai has claimed that the allegations in the complaint are covered by Settlements dated 14-4-2001, 30-11-2002, 27-11-2006 and 6-4-2011 and that such settlements are binding on the Complainants and therefore the complaint does not survive and accordingly issue No. 3 and 3A have been framed. It is therefore apposite to deal with the said issues before answering the other issues cast on the complainants.

*Issue No. 3:*

40. Ld. Adv. Shri G. K. Sardessai for Respondent No. 1 has submitted that the complaint filed by the Union is not maintainable under Section 33-A of the Industrial Disputes Act as complaint has to be made individually by the aggrieved workmen or they may authorise the Union, but authority has to be specific. The aggrieved workmen have not filed the complaint and the Union has no authorization. Exb. 96 is undated and the date of execution is unknown. It is intended at the most to be an authorization for claim for DA, VDA, Plant Bonus and for recovery in respect of claim under the settlement. The authority is an omnibus authority and does not specify the aggrieved workmen and in any event, it is not authorization as stipulated in rule 59 of the Industrial Disputes (Central) Rules, 1957. When the law provides that an act should be done in a particular manner, it should be done in that manner only. In support of his submission, he relied upon the case of **Castrol India Ltd., Mumbai v/s Mumbai Port Trust and General Employees Union, Mumbai, 2016 II CLR 41**.

41. Per contra, Ld. Adv. Shri. V. Menezes for Complainant has submitted that the complaint can be made under Section 33-A of the I. D. Act either

by the workman himself or by some other person proved to the satisfaction of the Tribunal to be acquainted with the facts of the case. He further submitted that there is no justification for assuming that the workman himself must file a complaint and that if the aggrieved workmen authorise the Union in writing to move the Tribunal by way of filing the application under Section 33-A, the application for all purposes is to be treated as an application by the aggrieved workman. He also submitted that Mr. Rohidas Naik was authorised by the workmen to raise the dispute so also he is acquainted with the facts of the case. He also submitted that where the "concerned" workmen are the entire workforce as in the present case, where the said workmen are affected as a whole by the change of service conditions specifically pleaded in the Para 23 of the complaint, there would be no bar on maintaining the complaint by the Union or its duly authorised office bearer, who is Shri Rohidas Naik in the present case as all workmen are covered by Charter of demands under reference No. IT/33/97. In support of his contention, he relied upon the cases of (1) **Management of the National Power Supply Corporation Ltd., vs. State of Assam and Others, AIR 1963 Assam 19**, (2) **New India Motors Private Limited, New Delhi vs. K.T. Morris, CDJ 1960 SC 174**, (3) **M/s. Shalimar Works Limited vs. Their Workmen, AIR 1959 SC 1217**.

42. Section 33-A indicates that it is designed to provide an instant remedy to a workman aggrieved by contravention of Section 33 of the Industrial Disputes Act. The right to complain against the contravention being conferred on the employee only and such employee has a right to make an application under Section 33-A of the Industrial Disputes Act. A registered Trade Union, of which such aggrieved employee is a member, has no right to file such an application. An employee can specifically authorise an agent to make such an application on his behalf and complaint filed by the Union or its secretary duly authorised by an aggrieved workman can be said to be properly presented. But in the absence of any proof to show that the office bearer of the Union was authorised to file the application, the same cannot be considered to be a valid application as held in the case of **Castrol India Ltd., Mumbai, supra**. It is further held that there is no justification for assuming that the workman himself must file the complaint and if the workman aggrieved authorises the Union in writing to move the Tribunal by filing application under Section 33 of the Industrial Disputes Act, for all purposes that application is to be treated as an application by an aggrieved



workman. A complaint can be made either by workman himself or by some other person proved to the satisfaction of the Tribunal to be acquainted with the facts of the case.

43. In the case of Management of National Power Supply Corporation Ltd., *supra* it has been observed that on a plain reading of Section 33-A of the Industrial Disputes Act, the workman aggrieved by the contravention of Section 33 is alone entitled to apply and if the Union is authorised in writing by the workmen aggrieved, the application by the Union will be an application by the aggrieved workmen but the Union in its own right cannot take up the dispute regarding the dismissal of a workman as an industrial dispute and apply under Section 33-A for adjudication. The dispute of an individual workman is essentially an individual dispute, but when it is taken up by a large number of workmen of the concern, it assumes the character of an industrial dispute and it cannot be said that the workers who were discharged and whose case was taken up by the Union by an application under Section 33-A were not concerned in the dispute, which was the subject matter of the reference pending before the Tribunal. A workman aggrieved by contravention of Section 33 is entitled to apply but if the Union is authorised in writing by the workman aggrieved, the application by the Union will be an application by the aggrieved workman. The Union can only apply when authorised by the employee aggrieved.

44. In *New India Motors Pvt. Ltd.*, *supra* it has been observed by the Apex Court in Para 9 as follows:

'In this connection the object of Section 33 must also be borne in mind. It is plain that by enacting Section 33 the Legislature wanted to ensure a fair and satisfactory enquiry of the industrial dispute undisturbed by any action on the part of the employer or the employee which would create fresh cause for disharmony between them. During the pendency of an industrial dispute status quo should be maintained and no further element of discord should be introduced. That being the object of Section 33, the narrow construction of the material words used in Section 33 (1)(a) would tend to defeat the said object. If it is held that the workmen concerned in the dispute are only those who are directly or immediately concerned with the dispute, it would leave liberty to the employer to alter the term and conditions of the remaining workmen and that would

inevitably introduce further complications which it is intended to avoid. Similarly, it would leave liberty to the other employees to raise disputes and that again is not desirable. That is why the main object underlying Section 33 is inconsistent with the narrow construction sought to be placed by the appellant on the material words used in Section 33 (1)(a).

45. The Apex Court in Para 10 has observed thus:

"Even as a matter of construction pure and simple there is no justification for assuming that the workmen concerned in such dispute must be workmen directly or immediately concerned in the said disputes. We do not see any justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of workmen acting on their own or through their Union then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. As we have already pointed out this construction is harmonious with the definition prescribed by Section 2(s) and with the provisions contained in Section 18 of the Act. Therefore, we are not prepared to hold that the expression "workmen concerned in such dispute" can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute."

46. There is no doubt that strictly speaking the order of the company discharging its workmen when a dispute was admittedly pending was a breach of Section 33 and the remedy for such a breach is provided in Section 33-A of the Act and it can be availed of by an individual workman and that it should be applied individually or collectively to the Tribunal under Section 33-A as held in the case of *M/s. Shalimar Works Ltd.*, *supra*. In that case, there was a dispute between the company and its workmen on a number of matters and it was referred to the Industrial Tribunal for adjudication who did not accept fully the contention of the parties. The Appellate Tribunal saw no reason to interfere with the award of the

Industrial Tribunal. The Apex Court held that the reference was vague in as much as the names of 250 workmen to be reinstated were not sent to the Industrial Tribunal, unlike in the present case where the names of the workmen who authorised the President of the Union to apply on their behalf to the Tribunal under Section 33-A of the Industrial Disputes Act have been mentioned and there is no dispute on that count.

47. In the case of **Blue Star Employees Union vs Ex-officio, Principal Secretary Govt. & Another, 2000(II) LLJ 1398**, the Hon'ble Apex Court has held that Section 33-A of the Act in fact, involves consideration of two aspects of the matter firstly, whether there has been any violation or contravention of the provisions of Section 33 of the Act and secondly, whether the act complied of is justified or not. Therefore, violation or contravention of the provisions of Section 33 of the Act would be the justification for the authority concerned to entertain an application under Section 33-A of the Act. The relevant observations of the Apex Court read as under:

"4. A complaint can be made to the Tribunal under Section 33-A of the Act if there has been violation or contravention of the provisions of Section 33 of the Act and if it is found that there has, in fact, been such a contravention the Tribunal can proceed to adjudicate the dispute contained in a complaint on its merits. Thus violation or contravention of the provisions of Section 33 of the Act would be the basic question that arises for consideration and before giving any relief to an aggrieved employee under this section, the tribunal has to find out whether the employer's action falls within one of the following provisions contained in Section 33 of the Act. (i) if the dispute, pending adjudication has nothing to do with the alteration in conditions of service of a workman in contravention of Section 33(1)(a) of the Act or alteration of conditions of service of a 'protected workman' within Section 33(1) of the Act; (ii) Discharges or punishes a workman by dismissal or otherwise for a misconduct connected with the pending dispute without obtaining prior express permission in writing of the Appropriate Authority as required by Section 33(1)(b) of the Act;

5. Thus, the contravention of the provisions of Section 33 of the Act is the foundation for exercise of the power under Section 33 of the

Act. If this issue is answered against the employee, nothing further survives for consideration or action by the Tribunal under Section 33 of the Act. In other words, an application under Section 33-A of the Act without proof of contravention of Section 33 of the Act would be incompetent."

48. It is therefore manifestly clear that the workmen aggrieved by contravention of Section 33 of the Industrial Disputes Act has a right to make an application under Section 33-A of the Industrial Disputes Act individually or by way of authorizing an agent to make such an application on their behalf and the complaint filed by the Union duly authorised by the aggrieved workmen is maintainable and where the concerned workmen are the entire workforce where the said workmen are affected as a whole by the change of service conditions, there would be no bar on maintaining a complaint by the Union or its duly authorised office bearer when all the workmen are covered by the Charter of demands.

49. The submission of Ld. Adv. Shri G. K. Sardessai that there is no specific authority produced on record; the Union has no authorization; the aggrieved workmen have not filed the complaint cannot be accepted as the individual letters of the workmen or the letters written on their behalf by the Union contained under Exhibits Nos. 75, 77, 78, 80, 81, 96, 132 to 139, 152, 154 respectively are nothing but the written authorization given by the workmen concerned to Shri Rohidas Naik regarding their grievances. The said documents authorise Shri Rohidas Naik to represent workmen individually or as a group regarding change of service conditions. Exhibit 96 is the Resolution by 652 workers of Goa MRF Employees Union authorizing Shri Rohidas Naik, President of their Union to file any application, Petition, reply or claim with regard to any types of bonus (including plant bonus), allowances (including DA & VDA), or any other benefits that may arise or breach that may occur in respect of or under any settlement and to claim the same and to do any act or think pursuance of the same. The said Resolution authorises Shri Rohidas Naik to file any claim with regard to any types of bonus, allowances or benefits or breach that may occur in respect of the said settlement.

50. The letter dated 3-9-1998 at Exb. 75 addressed to the Production Manager by one Ulhas Surlekar and two others indicates that the workmen are willing to be trained on new 74" Calendar Department as the management had unilaterally changed their service condition by

fixing 74" Calendar in addition to the 68" Calendar which would cease to function according to the notice dated 4-8-1998 and that they may be paid wages for 4-8-1998 since training was for those willing to be trained and was optional. The letter dated 24-8-1998 at Exb. 77 addressed to Sr. General Manager by Rohidas Naik shows that despite their objection the management has implemented unfairly and illegally the new strapper table with four trenches and due to illegal implementation of modified four strap table, the workmen namely Apparao Patil and others from Shipping Department have suffered huge loss in pay by decreasing their efficiency bonus and piece rate which amounted to change in service condition. The letter dated 13-2-1998 at Exb. 78 addressed to Production Manager by Salvador Gonsalves and others with copy to GMEU states that the workmen namely Salvador Gonsalves and 15 others from Shipping Department have been informed that they have to provide four straps for tyres instead of three straps which is an unilateral change in their service conditions by not informing and discussing with the Union and the proposed change in service condition is an unfair labour practice.

51. The letter dated 18-7-1998 at Exb. 79 addressed by Rohidas Naik make reference to the grievances of MRF Ltd. workers. The letter dated 11-2-1998 at Exb. 80 addressed to the Production Manager, MRF by Rohidas Naik as President also refers to change in service conditions of workmen of Tyre Building Department which resulted in waste of time and loss of production and consequent loss of piece rated pay. The letter dated 19-1-1998 at Exb. 81 addressed to the Plant Human Resources Manager by Rohidas Naik as President also refers to installation of new machinery for production of tyre threads, specification of which had not been informed by them nor they were informed as to the service conditions which shall be applicable to the new Department and that the transfer of workmen namely Vasant Naik and others to new Department without having regard to the pay and timings would amount to change in service condition which is illegal and violative of law. The letter dated 20-9-1997 at Exb. 132 addressed to the Manager, MRF Ltd. by Rohidas Naik specifies that certain workmen who are working in Bladder Fixing Department which is a Sunday work pattern are transferred to Band Building Department which has a six day working pattern and that the said workmen have been orally directed to report to work on Sunday in a Department which has a six day pattern and that they should not indulge in changing service condition of their workers unilaterally as issues are pending in a reference

before the Industrial Tribunal and unilateral change in service condition will amount to breach of provision of the Act.

52. The letter dated 28-8-1997 at Exb. 133 addressed to Plant Human Resource Manager, MRF by Shri Savio Furtado clearly shows that the workmen were forcibly being asked to work in six day running Department on Sundays thus effectively running the plant on seven days a week. The said letter also makes a reference to the Charter of demands leading to a fresh settlement which resulted in a dispute which is pending before the Industrial Tribunal in reference No. IT/33/97 and that they should maintain status quo till such time the matter is decided. The letter dated 8-9-1997 at Exb. 134 is the warning issued to Shri Piedade Travasso for unauthorisedly reporting on weekly off day and calling for strict disciplinary action against him. The letter dated 11-12-1997 at Exb. 135 addressed to the Manager, MRF by Rohidas Naik as President pertains to change of machinery in Bead Department without notice of change and without following procedure of law as set out in the Industrial Disputes Act and that the change is patently illegal. The letter dated 27-7-1997 Exb. 136 addressed to Head of Department, MRF by Shri Babani Gaude and Shri Eric P. Faleiro with a copy to the President, GMEU refers to change in service condition and to restore their full working hours and not to depart from normal working practices or to take any unilateral decision while affecting change in service conditions.

53. The letter dated 4-7-1997 at Exb. 137 addressed to the Head of Department, MRF by Anand Naik and others with a copy to GMEU states that they have changed the system or process followed in six tuber by discontinuing the relievers at meal timings without consulting them and that the said system which was changed on 30-6-1997 after more than 8 years being followed in the Department has caused great hardship to them, besides unilaterally changing their service conditions and requesting them to revert to the old system of two relievers during their meal timings. The letter dated 31-8-1997 at Exb. 138 addressed to the Manager, MRF by one Antonio Vaz states that his service conditions has been unilaterally and arbitrarily changed by forcing them to attend work on Sundays under the threat of termination and that notice dated 19-8-1997 displayed on the notice board constitutes change of their service conditions without notice since the demands of their Union are pending in a reference before the Tribunal, which constitutes the breach of the provisions of Industrial Disputes Act.

54. The letter dated 28-4-1997 at Exb. 139 addressed to Sr. General Manager by Shri Rohidas Naik as President of GMEU states that Savio Furtado and others were called to discuss the changes proposed orally to Boiler House Department which according to them was on the basis of report/study and that changes in service conditions for the workmen was proposed without notice or any proposal in writing. The letter dated 28-4-1997 at Exb. 152 addressed to Sr. General Manager by Rohidas Naik as President brought to his notice regarding proposed shifting of sixteen mechanics, four helpers and six mechanics to Machine Shop Department or to do jobs in the Generator Room which was done by engineering helpers for the last four years and that the said proposal constitutes change in service conditions of the said workers in Boiler House Department.

55. The letter dated 17-10-1997 at Exb. 154 addressed to Plant Human Resources Manager by Rohidas Naik refers to transfer of Shri Shashikumar P. S. from Cement House Department to Leave Reserve Department and later on in Tyre Building Department. The letter dated 6-6-1997 at Exb. 155 addressed to the management by Rohidas Naik as President refers to transfer of workman, Shri Mahadev Shetkar from Prop II (Mechanical) to Mobile Mechanical/Common Pool which shows that the general pool has been unilaterally abolished by the management without notice to the workmen and a system of three shifts of eight hours each has been enforced instead, which amounts to change in service condition without any written instruction.

56. The above documents including the authorization letter at Exb. 96 clearly show that the Union represented by Shri Rohidas Naik was authorised in writing to represent the workmen in raising dispute regarding change in service conditions. The complaint filed by the Union on behalf of the workmen who are covered by Charter of demands under reference No. IT/33/97 is maintainable as the entire workmen are affected by the change of service conditions. Shri Rohidas Naik has filed the application under Section 33-A of the Act on behalf of the workmen and the said authorization/letter produced on record clearly shows that Shri Rohidas Naik as the President of the Union was duly authorised to raise the Charter of demands as well as to file the complaint, which is the subject matter of the dispute in the present proceedings. There is no dispute that Shri Rohidas Naik is acquainted with the facts of the case. Shri T. M. Kurian on page 134 of the cross examination has admitted the letter at Exb. 242 has been signed

by Shri Rohidas Naik as President of the Complainant. He also admitted that generally Shri Rohidas Naik used to sign all the correspondence of Complainant to Respondent No. 1 which shows that Shri Rohidas Naik was familiar with the facts of the case being President of the Union and therefore the contentions raised by Ld. Adv. Shri G. K. Sardessai and the reliance placed on the case of Castrol India Ltd. *supra* is not applicable to the case at hand.

57. Ld. Adv. Shri G. K. Sardessai has further submitted that under Section 4 of the Trade Unions Act, 1936, no Trade Union of workmen shall be registered unless at least 10 percent or 100 of workmen whichever is less engaged or employed in the establishment or industry with which it is connected are the members of such Trade Unions. According to him Section 6 of the Trade Unions Act makes provisions of what need to be contained in the Rules/Bye-laws of Trade Union. The Rules/Bye-laws cannot contain any provision which is contrary to the provisions of the Trade Unions Act or what is required to be provided under Section 6 of the Act. Admission of ordinary member shall be only of a person actually engaged or employed in the establishment. Honorary or temporary member is different class from ordinary members. The honorary or temporary members can be office-bearers. Rohidas Naik cannot be admitted as ordinary member and no Rules/Bye-laws can provide for admission of ordinary members of persons who are not in employment.

58. Ld. Adv. Shri G. K. Sardessai has further submitted that there is no evidence that Rohidas Naik has been inducted as temporary or honorary member. In any event, Rules/Bye-laws of the Union restrict the honorary or temporary members as legal advisor who are treated as office bearers. Honorary or temporary member cannot be a President of the Union. Registrar can cancel the registration if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of the Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by Section 6. Bye-laws of the Union will be registered by the Registrar only if they are in accordance with the Trade Unions Act and provisions laid down specifically in Section 6 of the Act. Section 10 indicates that Bye-laws cannot contravene the provisions of the Act or allow any rule to continue in force which is inconsistent with any such provisions. He further



submitted that there is contravention of the provisions of the Act and therefore the registration of the Union is liable to be cancelled.

59. Ld. Adv. Shri G. K. Sardessai further submitted that the object of the constitution of the Union at Exb. 170 is to organize and unite the persons employed in the MRF unit in Goa and any person referred in Clause 2(A) shall be entitled to become ordinary member of the Union on payment of any admission fee and in terms of Section 10(II), there shall be two posts as honorary member in the capacity of advisor and honorary member will not be eligible for voting however such members will be full-fledged office bearers of the Union. He further submitted that the Bye-laws of the Union provide for methodology for amendment and the amendment of the Bye-laws sought by the Union at Exb. 100 was not allowed because it was against the provisions of Section 6(e) as the admission of ordinary members shall be persons actually engaged or employed in an industry with which the Trade Union is connected and also the admission of number of honorary or temporary members as office bearers required under Section 22 to form the executive of the Trade Union.

60. Ld. Adv. Shri G. K. Sardessai further submitted that the amendment has not been granted by the Registrar as the Registrar on submission of Bye-laws at the time of registration has to ensure that the Bye-laws comply with the provision of sub-clause 1 of Section 4 and that the Registrar has to particularly ensure that the Bye-laws are in compliance with respect to Section 5 and Section 6 of the Act. It is only when Registrar on being satisfied that the trade Union have complied with all the requirement of the Act with respect to registration, he shall register the Union. The amendment to the Bye-laws should comply the provisions of the Act. The letter dated 24-9-2013 at Exb. 235 is the proof that the Bye-laws have not been approved by the Registrar and it is the burden of the Union to show that the Bye-laws have been approved. In support to his arguments, he relied on the cases of (1) **Indian Oxygen Ltd vs. Their Workmen**, 1969 (I) LLJ 235, (2) **State Bank of India Staff Association vs State Bank of India and Ors.**, (1996) 4 SCC 378, (3) **S. Valaiyapathy vs Indian Overseas Bank**, (4) **Digwadih Colliery vs. Ramji Singh**, 1964 (II) LLJ 143, (5) **Hotel Imperial vs. Chief Commissioner and Ors.**, 1959 (II) LLJ 553.

61. Per contra, Ld. Adv. Shri V. Menezes for Complainant has submitted and rightly so that the object of Trade Unions Act is to provide for the registration of a Trade Union and in certain respects

to define the law relating to Trade Union. Section 2 defines various terms including 'trade dispute' and 'Trade Union'. Chapter II provides for registration of Trade Union. Section 5 provides for an application being made for registration to the Registrar. Section 6 provides for provisions to be contained in the rules of a Trade Union. Section 7 provides for power to call for further particulars in the matter. Registration is provided under Section 8 of the Act. To understand the dispute between the parties, it is relevant to note the two definitions in Section 2(g) and 2(h). The said definitions read as 2(g) 'trade dispute' which means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person and 'workman' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises and under 2(h) 'Trade Union' means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between the workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions."

62. Ld. Adv. Shri V. Menezes further submitted that the word 'workmen' under Trade Unions Act includes all persons employed in a Trade or Industry and that it is not a restrictive definition as in any other enactment of labour laws when the Act itself provides for a wider definition and for a wider meaning of that definition, the Courts cannot narrow it by its decision as that would be against the very object of the Trade Unions Act. He further submitted that there is no prohibition under Section 6 read with Section 22 of the Trade Unions Act or the regulation of the Act to automatic cessation of membership on happening of any event, unless the Bye-laws specifically provide for a bar to membership of certain members and even retired member or member whose services are terminated could continue as a member and be elected as an office bearer of the Union in the absence of any bar. In support of his contention, he relied upon the cases of (1) **Tirumala Tirupati Devasthanam vs. Commissioner of Labour and Ors**, 1995 Supp(3) SCC 653, (2) **Government Tool Room Vs. Registrar**, 2002 LIC 1034, and (3) **Bokajan Cement Corporation Employees Union vs. Cement Corporation of India**, 2004 (1) SCC 142.

63. In case of **Indian Oxygen Ltd.**, supra it is held that combined effect of sub-section 6(g), 28(3), 29 and 30(3) and Regn. 9 of the Indian Trade Unions Act is that a registered Trade Union can alter its rule only in the manner provided in those provisions. It has to send its amended rules to the Registrar within fifteen days from the amendment and until the Registrar is satisfied that the amendments are in accordance with the rules of the Union and register them in a register kept for this purpose and notifies that facts to the Union secretary, the amendments do not become effective. The said judgment is not applicable to the present case as the facts are different as reference had been made only at the behest of one group i.e. Workmen at Jamshedpur; there was no prohibition for amendment of Bye-laws; the amendment was not contrary to the Trade Unions Act; Bye-laws/ /Rules of the Union and lastly only Union could object and not the employer.

64. In the case of **State Bank of India Staff Association**, supra it has been held that the management was not supposed to negotiate with the retired employee as General Secretary of the Bank's Staff Association since he ceased to be an employee of the Bank after retirement. In the said case, the relevant rules and the constitution of the State Bank of India Staff Association provided that after retirement from the Bank's service, ordinary members shall not continue to be such members. Considering the said Rules, it was held that:

"A cursory look at Rule 5 will make it clear that to become an ordinary member of the Association one has to be a permanent employee of State Bank of India and at the same time not below the age of 18 years whereas Rule 6 provides that a person who is not a permanent employee of the Bank as contemplated under Rule 5 but has some sympathy with the objects and spirits of the Union he may be elected honorary member at the triennial or special meeting of the General Council etc... convened for the purpose. Further, according to Rule 9 ordinary members after retirement from the Bank's service shall not continue to be such members while Clause (a) of Rule 9 provides that an ordinary/ /honorary member of the Association will be eligible to occupy or continue in any post in the Central Committee/Central Working Committee/Circle Committee/Unit Committee but such ordinary/honorary member of the aforesaid Committees will forthwith cease to be such member if he ceases to be an ordinary/ /honorary member, notwithstanding anything

contained to the contrary in the Rules. State Bank of India Staff Assn. case does not lay down that Clause (e) of Section 6 provides for cessation of membership. In our view, it only provides for admission of membership. In the absence of any provision in the constitution of the trade Union for automatic cessation of membership as the result of cessation of employment, it cannot be held that an employee would cease to be a member of the trade Union in such an eventuality."

65. In the case of **S. Valaiyapathy**, supra the main contention of the Petitioner was that the third and fourth respondents retired on 30-06-2012 and on 31-03-2012 respectively as the first respondent-Bank employees and therefore, they cannot be members and officer-bearer of the Union and consequently, they cannot negotiate with the first respondent-Bank. It was held that no doubt, Clause 4(b) of the Bye-laws of All India Overseas Bank Employees' Union, Chennai enables the persons who are not eligible to be ordinary members, viz. employees of the Indian Overseas Bank, may be admitted as Honorary Members by the resolution of the General Council of the Union for the purpose of being elected to National Executive subject to provisions of Section 22 of the Indian Trade Unions Act, 1926. In terms of Clause 4 of the Bye-laws of All India Overseas Bank Employee's Union, any person employed/engaged by Indian Overseas Bank and who is not below the aged of 18 and not belonging to supervisory cadre shall be enrolled as ordinary members of the Union, provided he agrees to abide by the rules and the Bye-laws of the Union. The term "employees" shall include probationers, apprentices, appraisers, thrift deposit collectors, temporary employees etc., employed/ /engaged by Bank. Ordinary members normally after retirement from the Bank service shall not continue to be such members. While persons who are not eligible to be ordinary members under Clause 4(a) but are in the sympathy with the objects and principles of the Union may be admitted as Honorary members by a resolution of the General Council of the Union for the purpose of being elected to National Executive and shall be Honorary members of the Union during the period of office subject to provisions of Section 22 of the Indian Trade Unions Act, 1926.

66. In the above referred case, it is also observed that the number of Honorary Members so admitted in any case shall not exceed six for time being. Honorary Members may make any contribution towards the funds of the Union as they like. The Honorary Members shall also be members of the

general Council. The National Executive shall also be entitled to admit Honorary Members subject to the number fixed above. From the above, it is very clear that a retired bank employee cannot continue as ordinary member as per Clause 4(a). However, under clause 4(b) he can be admitted as Honorary member by the Resolution of the General Council or by National Executive as Honorary member. In view of that, the contention of the petitioner that the third and fourth respondents cannot continue as members of the Union has to be rejected. The said citation is not applicable to the case at hand as in the rules of the Indian Overseas Bank Union, retired Bank employees could not continue as ordinary members, unlike in the present case where there is no prohibition in the Bye-laws of MRF Union to continue to be the member of Association.

67. The case of **Digwadih Colliery**, supra dealt with the dismissal of a workman from service for having been found guilty of misconduct of lending money to a subordinate employee and the aggrieved workman filed a complaint under Section 33-A of the Act and that the workman having failed to prove that he was a “workman concerned in the dispute” in a pending dispute within the meaning of Section 33 of the Act, the Industrial Tribunal without ascertaining the nature of pending dispute held that the complainant was a workman concerned in the dispute. However, in the present case the nature of reference, the Charter of demands, the letters of the workmen at Exb 75, 77, 78, etc, the Resolution at Exb. 96, the points/issues proposed by the management at Exb. 67 clearly put to an end the controversy existing between the parties. The workmen in the present dispute are concerned in the main dispute of Charter of demands. Every workman is concerned with the dispute as they are affected by piece rated payment. The workers who are concerned in the dispute are the members of the Union and therefore the above judgment is not applicable to the case at hand.

68. In the case of **Hotel Imperial**, supra industrial disputes was referred relating to service conditions of workmen employed in the hotel mentioning the dispute as an industrial dispute between the management of the hotel and the workmen represented by a particular Union. However, there was no mention of total workmen involved in the dispute. The Hon'ble Apex Court held that the order of reference does not become invalid on the ground that it mentions the dispute referred as the industrial dispute between the management and the workmen “represented by a particular Union” in the order of reference as it is merely for the sake of convenience so that the Tribunal may know to

whom it should give notice when proceeding to deal with the reference. This however does not preclude the workmen, if they want to be represented by any other Union to apply to the Tribunal for such representation or even to apply for being made parties individually. Further, the order of reference could not be considered to be vague on the ground that it failed to specify how many of the total number of workmen were involved in the dispute.

69. It is further held in the above referred case that it is unnecessary for the purpose of Section 10 where the dispute is of a general nature relating to the terms of employment or conditions of labour of a body of workmen to mention the names of particular workmen who might have been responsible for the dispute. It is only where a dispute refers to the dismissal, etc. of particular workmen as represented by the Union that it may be desirable to mention the names of the workmen concerned. Where the order of reference specified the parties to the dispute and the nature of the dispute, it would be unnecessary to mention further as to who were the workmen who were responsible for the dispute. However, the said citation is not applicable to the present case as the number of workmen representing the Union is not in dispute nor the persons involved in it are under challenge. The dispute involves about the workmen whose conditions of service have been changed and the matter is proceeding in reference No. IT/33/97.

70. In the case of **Tirumala Tirupati Devasthanam**, supra it has been held that it is only the trade Union which can approach the Registrar on the grounds mentioned in Section 10 of Trade Unions Act for cancellation of its certificate and the registration of the Association of the said workmen as a trade Union under the Act has nothing to do with whether the said appellant are an industry or not. It therefore follows that Respondent No. 1 cannot challenge the registration of the Union under the Trade Unions Act and therefore the stand taken by the Respondents as stated above while challenging the amendment to the Bye-laws or the Bye-laws itself are not available to respondents. Even if there is violation of the Trade Unions Act by the complainant Union, it is for the concerned authority to deal with the same and not for the employer to challenge it before the Tribunal.

71. In the case **Government Tool Room**, supra, it has been held that the object of Trade Unions Act is to provide for the registration of a Trade Union and in certain respects to define the law

relating to trade Union. 'Trade Union' means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between the workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions and that it is clear that the word 'workmen' under the Trade Unions Act include all persons employed in a Trade or Industry. When the Act itself provides for a wider definition and for a wider meaning of that definition, the Courts cannot narrow it by its decision. That would be against the very object of the Trade Unions Act itself. It is therefore clear from the expression of 'trade Union' that it could be a combination either of workmen or of employees or, of both, provided it is formed primarily for one of the purposes mentioned in Clause (h) of Section 2 of the Act. It is, therefore, possible to have a trade Union consisting only of employers. The emphasis in Section 2(h) is on the purpose for which the Union is formed and not so much on the persons who constitute the Union.

72. It is held in the case of **Bokajan Cement Corporation Employees' Union**, *supra* that the constitution of the trade Union is not required to be construed as a statute and it deserves to be construed broadly and liberally. The Act and the constitution of the trade Union unless clearly stipulate otherwise, deserve to be interpreted so as to advance the interest of the trade Union and its members. The membership of the trade Union is a valuable right which can be taken away only in the clear parameters of the Act and the constitution of the trade Union. The only effect of Section 6(e) is that the rules of trade Union have inter-alia to provide for admission of those who are actually engaged or employed in the industry as honorary members so as to entitle the trade Union to seek registration under the Act. Section 6(e) does not provide that on cessation of employment, an employee would cease to be a member and on the aspect of cessation of trade Union, a trade Union can make provision in its constitution.

73. It is further held in the above referred case that it is one thing to say that the constitution of a trade Union shall provide that those actually engaged or employed would be entitled to be admitted as members of the trade Union and it is altogether a different thing to say that they would cease to be members once they are not actually engaged or employed. The latter is not what Section 6(e) contemplates. If a trade Union accepts that

once a member would always continue to be a member, there is nothing in the Act which militates against it. A trade Union may provide under which circumstance a member would lose the membership. There is no provision in the Act or the constitution of the trade Union providing for automatic cessation of membership on cessation of employment.

74. The short question therefore is whether Rohidas Naik as a result of cessation to be in employment of the company on his retirement on March 2012 or by alleged conduct giving up of membership of the Union would lose his right to continue as the member/office bearer of the trade Union, sign the pleadings or depose in the matter.

75. There is no dispute that Section 6(e) refers to admission of ordinary members who shall be persons actually engaged or employed in an industry. Section 8 refers to registration of trade Union and Section 10 to withdrawal or cancellation of certificate of registration of trade Union by the Registrar. The Resolution dated 5-9-2011 of the Union at Exb. 100 colly, addressed to the Commissioner, Labour resolving to amend Clause 3 of the constitution whereby person referred in clause 2(1) or any other person who may have not been employed in MRF Ltd. shall be entitled to become an ordinary member of the Union on payment of admission fees, is not at all contrary to Section 6(e) of the Trade Unions Act. The said resolution was taken by 298 members of the trade Union. There is no prohibition in the Bye-laws of the Complainant Union which debar the members who are not employed with MRF Ltd. Rule 6(e) does not provide that on cessation of employment, an employee would cease to be the member. The Union had made amendment to the Bye-laws and the same was informed to the Labour Commissioner. Section 6 also does not contemplate that only persons who are actually engaged or employed would be admitted as members of the trade Union. It however contemplates that all the workers employed in the industry directly or indirectly throughout to be eligible for membership in terms of Section 5 which is a provision for becoming a member.

76. The Constitution and Rules of the Union at Exb. 170 provides for admission of ordinary members. Under clause 3, any person referred to in clause 2(A) shall be entitled to become an Ordinary Member of the Union on payment of an admission fee of Rs. 25/- and an annual subscription of Rs. 60/- (monthly subscription of Rs. 5/-) provided he agrees to abide by the Rules and Bye-laws that may be



made by the Union from time to time. Clause 10 (ii) refers to admission of honorary member. It states that there shall be two posts as Honorary Members in the capacity of Advisors. Honorary member will not be eligible for voting. However, in all respects such Honorary Members will be full-fledged Office Bearers of the Union. There is also no provision in the Constitution and Rules of the trade Union at Exb. 170 that a member would lose his right to continue as member of the Union on cessation of employment in the company on his retirement or if he takes up a membership of another Union.

77. There is no other clause in the Bye-laws or under Trade Unions Act providing cessation of membership of trade Union. It is not the case of Complainant that Shri Rohidas Naik who is the member of the trade Union has suffered disqualification under clause 9 of the Act. There is also no provision in the Act or the Constitution of the trade Union for automatic cessation of membership on cessation of employment. It is only under Section 10 of the Trade Unions Act that the Certificate of Registration of the trade Union may be withdrawn or cancelled by the Registrar on the application of the trade Union to be verified in such manner prescribed or the Registrar if satisfied that the certificate has been obtained by fraud or mistake or that the trade Union has ceased to exist or has willfully and after notice from the Registrar, contravened any provision of the Act.

78. What emerges from the above submissions of the Learned Advocates for the parties and the citations relied upon by them is that the eligibility laid down in the Bye-laws/Constitution and Rules of the Union for becoming a member of a Union cannot operate as a provision for automatic cessation of membership on superannuation or termination of the services as there is no prohibition under Section 6, Section 22 or any regulations of the Act to automatic cessation of membership on the happening of such event, unless the Bye-laws specifically provide for a bar to membership of certain persons. It is therefore even a retired member or a member whose services are terminated can continue to be a member of the Union in the absence of such a bar. Even assuming that the amended Bye-laws are not taken into consideration, there being no such bar in the original Bye-laws of Complainant Union, Shri Rohidas Naik could continue as a member and be elected as an office bearer of the Union. In any event, the amended Bye-laws take effect in relation to the members of the Union and Respondent No. 1 has no locus standi to raise the issue.

79. It is thus seen that the Certificate of Registration cannot be cancelled on the objections raised by the employer but in terms of provisions contained in Section 10. If the Constitutions and Rules at Exb. 170 are not in terms of the Act, it is for the trade Union or the Registrar of Trade Unions to act upon it. There is no question of grant of amendment by the Registrar or challenge it before the Tribunal. Section 6(e) only provides for admission of membership and not for cessation and therefore the submission of Ld. Adv. Shri G. K. Sardessai as stated above cannot be accepted in the absence of any provision in the constitution of the trade Union for automatic cessation of the membership or on the ground that the Bye-laws have not been approved by the Registrar or the employee ceases to be the member of the Union on leaving the employment by resignation or dismissal of service, superannuation or voluntary giving up service by his conduct on becoming the office bearer of the another Union, nor it can be said that Shri Rohidas Naik has lost his right to continue as member/office bearer of the trade Union or sign the pleadings or depose in the matter. It therefore cannot be said that the complaint filed by Complainant is not maintainable as contended by Advocates for the Respondents.

80. Ld. Adv. Shri G. K. Sardessai for the Respondent No.1 has submitted that Shri Rohidas Naik has resigned from Mumbai Mazdoor Sabha. He further submitted that an employee ceases to be the member of the Union on his disqualification under the constitution of the Union, including voluntary giving up membership by resignation or by his conduct. He further submitted that Shri Rohidas Naik has voluntarily given up the membership by taking the membership of another Union during the currency of earlier membership indicating that he is the full fledged member of new Union. He also submitted that by becoming office bearer of new Union or otherwise representing the new Union in official capacity or industrial dispute being taken up by a new Union, would disentitle him to become an office bearer of the Union.

81. Ld. Adv. Shri M. S. Bandodkar for Respondent No. 2 has also submitted that Rohidas Naik was neither President of Complainant Union nor he had authority to file the complaint. The letter at Exb. 16 filed by Respondent No. 2 clearly shows that Rohidas Naik could never act as the President of the Union. There is no provision in the constitution of the Union to call General Body Meeting as per Exb. 178 and therefore Shri Rohidas Naik has not acted as per the constitution of the

Union. He further submitted that the overwhelming majority of the workmen have accepted membership of Mumbai Mazdoor Sabha as per Exb. 83 after tendering their resignation enmasse and that said Sabha would be sole collective bargaining agent and no one else would have power. Exb. 159 which is a letter seeking clarification from Rohidas Naik clearly shows that he has resigned from the membership of the Union and became the member of the Sabha and as per law only industrial dispute can be raised by only Union to which the workman is the member and therefore any subsequent act by Rohidas Naik is illegal and bad in law.

82. Ld. Adv. Shri M. S. Bhandodkar has further submitted that as per Constitution and Bye-laws of the Union, the President shall have only power to call special meetings of the executive committee of the Union, whenever necessary. Rohidas Naik therefore can never exercise power other than calling of the meetings including filing of the complaint, signing papers, correspondence, etc. as powers are specifically given to the General Secretary of the Union in terms of clause 17 of the constitution subject to approval/confirmation of the executive committee. Only General Secretary has power to conduct all correspondence and convey all meetings, exercise supervision or affairs of the Union, etc. and therefore exercise of powers specifically given to the General Secretary of the Union by Rohidas Naik would be bad in law for all purposes and therefore entire complaint is without any jurisdiction.

83. Ld. Adv. Shri V. Menezes for Complainant has submitted and rightly so that Complainant has produced on record several proceedings commencing from the year 1999 to 2006 at Exb. 120 to Exb. 125 wherein Respondent No. 1 has neither raised any objection as to the locus standi of Rohidas Naik or his committee members to represent the Union and has participated in all the proceedings up to the Apex Court thereby accepting Rohidas Naik as representing the Union. It is a matter of record that the Respondent No. 1 had raised a question of locus standi in earlier reference at the behest of canteen labour represented by Party I in reference No. IT/18/2003 at Exb. 120 and in the said Award passed on 28-01-2005 on the very same facts and evidence as in the present matter, it was held that Shri Rohidas Naik has locus standi to represent the Union.

84. It is an admitted fact that the Order dated 25-2-2013 at Exb. 123, the Writ Petition No. 208/2013 at Exb. 124 and Exb. 125 show that Respondent No.1 had not raised any objection to

the locus standi of Shri Rohidas Naik as raised by Respondent No.1, now, more so when Shri T. M. Kurian has admitted at Page 139 of the cross examination that they have not raised any objections regarding locus standi of Shri Rohidas Naik in Writ Petition No. 237/2005, Review Application No. 25/14 and SLP No. 15/06 to represent Complainant as its President. He also admitted on page 142 that in Writ Petition No. 106/99, Complainant was represented by Shri Rohidas Naik as its President. He also concurred that they have not raised any objections in Civil Appeal No. 1007/2004 at Exb. 85, Writ Petition No. 106/99 at Exb. 86, LPA No. 5/2003 at Exb. 87 as to the locus standi of Shri Rohidas Naik as President of the complainant and that in all the proceedings Shri Rohidas Naik was representing Complainant as its President. He also admitted that as far as he knows Shri Savio Furtado has never challenged by way of any proceedings the claim of Shri Rohidas Naik as President of GMU.

85. Moreover, the documents produced by the complainant from Exb. 212 to Exb. 220 clearly demonstrate that Shri Savio Furtado has resigned from the committee as also Shri Agnelo and some other committee members and that there is no resignation produced on record of Shri Rohidas Naik. The documents namely Exb. 96, 97, 211 and 214 including the Annual returns filed before the Registrar of Trade Unions from the year 1999 to the year ending December 2012 at Exb. 93 colly, go to show that Shri Rohidas Naik continued his membership and was the President of the Union. The letter dated 8-10-1998 at Exb. 212 shows that election to the General Body Meeting of Goa MRF Union was held on 2-10-1998 in which Shri Rohidas Naik was elected as President, Shri Agnelo Andrade, General Secretary and Shri Savio Furtado as 2nd Joint Secretary. The notice dated 19-1-1991 at Exb. 213 shows that the General Body Meeting was held on 26-1-1999 at Satyanarayan Temple Hall, Dhavlimol to conduct election for the year 1999-2001.

86. The attendance sheet of General Body Meeting at Exb. 214 show that Shri Savio Furtado did not attend the meeting. Shri Rohidas Naik on page 37 of cross examination has stated that when he was the President Shri Savio was the General Secretary of GMU and at that time the Charter of demands dated 19-9-1995 were raised and that Shri Savio Furtado has signed the C.O.D. as General Secretary which culminated into IT/33/97 so also that Shri Savio Furtado has resigned on 20-9-1998. The said facts have not been denied. The letter dated 28-01-1999 at Exb. 215 indicates that the

election for General Body Meeting was held on 26-1-1999 in which Shri Rohidas Naik was elected as President and Shri Agnelo Andrade as General Secretary and in place of Shri Savio Furtado, one Anthony Pereira was elected. By letter dated 21-01-1999 at Exb. 220 Shri Savio Furtado called upon Shri Rohidas Naik not to consider recommendation of his name for re-nomination/selection to the executive committee of the Union and that he shall be not in a position to attend General Body Meeting scheduled on 26-1-1999.

87. The said documents clearly demonstrate that Shri Savio Furtado had resigned from the committee and Shri Rohidas Naik continued his membership/Presidency of the Union. Shri Rohidas Naik on page 15 of the cross examination has stated that he had joined Mumbai Mazdoor Sabha but had not resigned from Complainant Union. The letter dated 8-1-2000 at Exb. 82 on which heavy reliance has been placed by the management that Shri Rohidas Naik has resigned from Goa MRF Employees Union does not hold water as the said letter addressed by Shri Rohidas Naik to Mumbai Mazdoor Sabha clearly states that he had not resigned from Goa MRF Employees Union and that he still continues to be the member of the Union as also the President of the Union along with the member of Mumbai Mazdoor Sabha. There is nothing on record produced by the Respondent No. 1 that Shri Rohidas Naik had resigned from the Complainant Union or that there was a bar for joining Mumbai Mazdoor Sabha. Shri Rohidas Naik on page 52 of the cross examination has stated that there is no clash/conflicting interest between the two Unions, on the contrary the documents on record at Exb. 212 to 220 clearly show that Savio Furtado and others had resigned from the committee and that he was never the President of Goa MRF Employees Union. It is therefore the above contention of Ld. Adv. G. K. Sardesai pales into insignificance.

88. The submission of Ld. Adv. Shri G. K. Sardesai and Ld. Adv. Shri M. S. Bandodkar as aforesaid to the maintainability of the complaint by the Union so also that the complaint is not at the behest of the individual workmen or that the Union is not authorised by individual workmen to file the complaint or that Shri Rohidas Naik having attained the age of superannuation cannot be the President of GMEU nor do the Bye-laws of GMEU including amended Bye-laws allow for his election to that post or for continuing as a member of the Union, so also that the amendment of the Bye-laws is contrary to the scheme of Section 6, Section 22, Rules and Regulations of the Trade Unions Act and consequently Rohidas Naik has no right to depose

or represent the workmen cannot be accepted for the reasons mentioned above. Moreover, the judgments of (a) Bokajan Cement Corporation Employees Union, (b) Government Tool Room and (c) Tirumala Tirupati Devasthanam relied upon by Ld. Adv. Shri V. Menezes puts to rest the above contentions about the maintainability of the complaint raised by the Respondents.

89. Ld. Adv. Shri G. K. Sardesai has submitted that Shri Kurian has filed affidavit on 22-12-2014 and an additional affidavit on 4-2-2015 and his cross examination was concluded on 19-9-2016. He has been extensively cross examined but at no stage, an objection was raised to his competency/authority to depose in the matter. It is only at the stage of arguments that for the first time the objection has been raised. He further submitted that Section 196 of Indian Contract Act provides that where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratifies them, the same effect will follow as if they had been performed by his authority. Shri Kurian deposed on behalf of the company and examined him on his behalf. The company has not objected to Shri Kurian deposing on their behalf and therefore impliedly ratified the act of Shri Kurian to depose on their behalf. The Union by their conduct of not objecting to the deposition of Shri Kurian has also impliedly consented. The implied consent is by both the parties. In any event, the fact that the conduct/act can be ratified or impliedly consented to, indicates that it is a mere irregularity and does not go to the root of the matter. The Tribunal therefore has to deal with the deposition of Shri Kurian in the light of above submissions.

90. Per contra, Ld. Adv. Shri V. Menezes submitted and rightly so that Shri Kurian was neither authorised to depose on behalf of the company by resolution of its Board or by power of attorney and therefore not deposing on behalf of the company. The Hon'ble High Court of Bombay at Goa in the case of **Chico Ursula D'Souza vs. M/s. Goa Plast Pvt. Ltd., CDJ 2008 BHC 1298** has held that in the case of registered company it was duty of the company to have prima facie proved that he had entered the witness box pursuant to the power given by the company, pursuant to the resolution of the Board of Directors authorizing to depose on behalf of the company or on behalf of the Director to whom he purported to represent. No authority of the company or from the Directors has been produced on record by Shri Kurian

authorizing him to depose in the matter. There is also no resolution in favour of Shri Kurian either to file written statement or to depose in favour of the company.

91. Needless to mention, it was for Shri Kurian to prove that he had authority from the company to depose on behalf of the company nor produced a resolution, if there was one or get the acts done by him ratified by resolution of the company. The acts of Shri Kurian to depose in the matter have not been ratified by a Resolution of the company. It is not a mere irregularity but goes to the root of the matter. Moreover, Shri Kurian has also admitted in cross examination that he was not aware of anything connected with the execution of settlement dated 14-4-2001 at Exb. 250 nor he participated in any discussion which led to the said settlement. He was neither familiar with the facts of the case nor Party to any of the transactions relied upon by the parties to the matter and has been deposing either on hearsay or on basis of record to which he was not a party. Shri Kurian was never concerned with the negotiations and was working in production Department and therefore on this count also, his testimony does not inspire confidence. The Respondents having failed to prove that the application/complaint filed by the Union is not maintainable under Section 33-A of the Industrial Disputes Act, 1947, the issue No. 3 is answered in a negative.

*Issue No. 3A:*

92. Ld. Adv. Shri G. K. Sardessai for Respondent No.1 has submitted that the Tribunal was pleased to frame Issue No. 3A vide Order dated 02-08-2013 as to whether the Respondent No.1 proves that the allegations/contentions in the complaint are covered by the settlements dated 14-04-2001, 30-11-2002, 27-11-2006, 06-04-2011 and that such settlements are binding on complainant and therefore the complaint does not survive. The said issue placed the burden on the Respondent No. 1 to prove that the allegations/contentions in the complaint are covered by the settlements dated 14-04-2001, 30-11-2002, 27-11-2006 and 06-04-2011. Ld. Adv. Shri G. K. Sardessai further submitted that the Respondent No.1 does not press the issue No. 3A as such, the evidence on record produced to prove issue No. 3A may not be considered at the time of the adjudication of the complaint on merits.

93. Ld. Adv. Shri V. Menezes has submitted and rightly so that Respondent No. 1 moved an application for amendment of its pleadings incorporating therein allegations regarding four settlements that it claims to have arrived at, which

application after being opposed was allowed, consequent to which Respondent No.1 had to file an exhaustive rejoinder, over which process, more than 3 months had elapsed. Thereafter, the Respondent No.1 moved an application for framing an additional issue which on being opposed was allowed by the Tribunal and consequent upon the said issue being framed, the parties had to lead extensive evidence on the said issue. It is also a matter of record that during the final arguments Adv. for Respondent No.1 submitted that it was not pressing for the said issue after evidence has been placed on record which goes to the root of the case as the alleged Settlement dated 14-4-2001 covers the period of the complaint, although retrospectively. It is therefore the application for dropping issue No. 3 cannot be allowed.

94. Discernibly, there is a settlement dated 14-4-2001 at Exb. 250 which covers the subject matter of the complaint where section of the workmen of Respondent No. 1 by signing undertaking have accepted the terms of the settlement which include the change in service conditions such as change from 6 days to 7 days working system in the entire plant. There is no dispute that the Complainant workmen were not party to the said settlement so also the subsequent settlements dated 30-11-2002, 27-11-2006 and 06-04-2011 respectively. The Complainant have disputed the said settlements based on which the Respondent No.1 claims that there is no subsisting disputes. It is therefore the burden to demonstrate that the said settlements including settlement dated 14-04-2001 which according to Respondent No. 1 covers the disputes is legal, valid and fair.

95. The Settlement dated 14-4-2001 at Exb. 250 has been signed by Shri Puti Gaonkar, Cruz Gracias and others representing the Goa MRF Employee's Union and Shri E.M. Mathai and others representing the management, wherein it is claimed that the management and the Union had a series of bipartite negotiations and that the said settlement covers two periods from 1-10-1995 to 30-9-1998 and from 1-10-1998 to 30-09-2002. The said period is retrospective and not prospective which is against the principles of a just and valid settlement. When the said negotiations took place whether Union accepted the demands have also not been specified. The said agreement covers the Charter of demands pending before the Tribunal regarding working on Sunday/weekly off days and paid holidays which is a part of present complaint and charter of demands pertaining to reference No. IT/33/97. Shri Savio Furtado who claims to be President of the Union had not signed the said agreement nor



stepped into the witness box. The witness of the management Shri T. M. Kurian had not attended a single meeting which led to the signing of settlement dated 14-4-2001 nor are the terms of the said settlement proved by him as he is neither a signatory nor witness to the execution of the said settlement. No person connected with or who has executed the said settlement has been examined nor its execution stood proved.

96. It is well settled that burden of proving execution, applicability, compliance with Rule 58 and fairness of a settlement lies upon the party claiming its execution. When the settlement is signed with one of the Unions in an establishment, Industrial adjudication will view the settlement from the following angles namely (i) Whether the settlement is a 2(p) settlement?; (ii) Whether the settlement is entered into by a Union or Unions representing the majority of the workmen?; (iii) Whether the settlement was signed by the recognised Union; (iv) How many workmen accepted the settlement? (v) Whether the settlement is tainted: i.e. malafide, corruption, collusion, fraud, unfair labour practices, etc.; (v) whether the settlement is fair and just as held in the cases of (1) **Workmen of M/s. Delhi Cloth General Mills Ltd. Vs. The Management of M/s. Delhi Cloth and General Mills Ltd., AIR 1970 SC 1851**; (2) **Tata Chemicals Ltd. Vs. Workmen, AIR 1978 SC 828**, (3) **Adil K. Patel Vs. Tata Iron, 1994 Lab. I.C. 2394**, (4) **Brooke Bond India Ltd. vs The Workmen, AIR 1981 SC 1660**.

97. In *D.C.G.M. Limited*, supra it has been held that the Management and the Union cannot, when a dispute is referred to the Conciliation Officer, claim absolute freedom of contract to arrive at a settlement in all respects binding on all workmen, to which no objection whatsoever can ever be raised by the workmen feeling aggrieved. The question of a valid and binding settlement in such circumstances is governed by the statute and the rules made thereunder. In the light of definition of 'settlement' in Section 2(p) and the provisions of Section 18(1) it is clear that Section 18(1) does not vest in the Management and the Union unfettered freedom to settle the dispute as they please and clothe it with a binding effect on all workmen or even on all member workmen of the Union. The settlement has to be in compliance with the statutory provisions. Hence, where there is non-compliance with Rule 58(4), the settlement is invalid. It is incumbent in such a case on the Tribunal to satisfy itself that the settlement relied upon by the management in support of the plea of legality of settlement, which vitally affected its

jurisdiction, was in accordance with the provisions of Industrial Disputes Act and the statutory rules.

98. In **Tata Chemicals Ltd**, supra it has been held that Section 2(p) of the Act envisages two categories of settlement (i) a settlement which is arrived at in the course of conciliation proceeding i.e. which is arrived at with the assistance and concurrence of the Conciliation Officer who is duty bound to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute and (ii) a written agreement between employer and workmen arrived at otherwise than in the course of conciliation proceeding. Whereas a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceeding under the Act is binding not only on the parties to the industrial dispute but also on other persons specified in Clauses (b) (c) and (d) of sub-sec. (3) of Section 18 of the Act. Even if a settlement regarding certain demand is arrived at otherwise than during the conciliation proceeding between the employer and the Union representing majority workmen, the same is not binding on the other Union who represents minority workmen and who was not a party to that settlement. The other Union can, therefore, raise the dispute in respect of the demand covered by the settlement and the same can be validly referred for adjudication.

99. In case of **Adil K. Patel**, supra it has been held that in order to be a settlement within the meaning of Section 2(p) of the Act (i) it has to be a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding, (ii) such agreement should be signed by the parties thereto in such manner as may be prescribed and (iii) a copy of it should be sent to an officer authorised in this behalf by the appropriate Government. It is further observed while saying that a settlement between employer and the recognized Union shall be binding on all the employees, the legislature also made inbuilt safeguards against its misuse by providing that such agreement should be in proper form and signed by the parties and copies thereof signed by both the employer and the workmen should be forwarded to the concerned parties for their information. These requirements are not empty formalities. They are intended to protect the interest of the workmen. That purpose will be frustrated, if these requirements are not strictly construed or duly complied with. In other words, the

requirements contained in clause 2(p) and rule 62 are mandatory and non-compliance of these requirements will have a serious dent on the binding effect of any settlement arrived at between the parties.

100. It is further held in the above referred case that unless the office bearers who signed the agreement were authorised by the executive committee of the Union to enter into a settlement or the constitution of the Union contained a provision that one or more of its members would be competent to settle a dispute with the management, no agreement between any office bearer of the Union and the management can be called a settlement as defined in Section 2(p). It is also further observed that rule 58 of the Industrial Disputes (Central) Rules, 1957 was similar to rule 62 (2)(b) of Bombay Rules and the said rule must be fully complied with if the settlement is to have binding effect on all the workmen and that the procedure prescribed by rule 62 of the Bombay Rules presupposes the existence of a valid settlement and therefore, the requirements of Section 18 and rule 62 are mandatory and unless any agreement between the Union and the employer is strictly in compliance with the requirements thereof, it will not be a settlement within the meaning of Section 2(p) of the Act and will not be binding under Section 18 of the Act.

101. In case of **Brooke Bond India Ltd.**, supra, the Apex Court in Para 5 has observed that:

Unless the office bearers who signed the agreement were authorised by the executive committee of the Union to enter into a settlement or the constitution of the Union contained a provision that one or more of its members would be competent to settle a dispute with the management, no agreement between any office bearer of the Union and the management can be called a settlement as defined in Section 2(p). There is no provision in the constitution of the Rashtriya Union authorizing any office bearer of the Union to enter into a settlement with the management. We have referred above to the proceedings of the executive committee. As the Tribunal points out, the resolutions passed by the executive committee do not support the claim that the Negotiation Committee was empowered to enter into a settlement without seeking ratification from the executive committee. The Tribunal held, in our opinion rightly, that the fact that the agreement was signed by the office bearer of the Union does

not clinch the matter because the executive committee at no stage had accepted the agreement. In fact no meeting of the executive committee was held before the agreement was signed on March 16, 1978 to consider whether the agreement was acceptable.

102. The moot question is whether the Respondent No. 1 proved that the settlement dated 14-4-2001 was signed by persons authorised to sign the same on behalf of the workmen by a resolution to that effect, whether Rule 58 of the Industrial Disputes (Central) Rules, 1957 has been complied, whether the Co-ordination Committee has been properly constituted and whether they have played any role in the negotiations, besides the fact that the settlement was fair, legal and proper.

103. The witness of Respondent No. 1, Shri T. M. Kurian has filed the Affidavit-in-Evidence so also additional Affidavits-in-evidence and has reiterated the contents of the written statements, however has admitted on page 84 that he did not sign the settlement dated 14-4-2001 at Exb. 250 and that Shri Claudio Fernandes was the Dy. Manager or Manager in the year 2001. He also admitted that the said settlement covers only the members of GMU as on 14-4-2001 and that it was extended to all the workmen of Respondent No. 1 upon giving undertaking to accept the settlement. He also claimed that he does not know that Shri Puti Gaonkar was the member of the GMU as on 14-4-2001 and is not aware if he has any resolution passed by the members of GMU authorizing Shri Puti Gaonkar to deal on its behalf. He also claimed that he does not know the exact number of members of GMU as on 14-4-2001 and that before entering into the settlement at Exb. 250 whether there was any General Body Meeting of the Union indicating that they have accepted the said settlement.

104. Shri Kurian however denied the suggestion that the said settlement dated 14-4-2001 was never signed nor registered nor the person representing the workmen were authorised to sign. The Resolution dated 4-3-1997 produced at Exb. 282 and the letter dated 9-2-2000 at Exb. 283 have not been proved by examining its signatories. The list showing the number of workmen at Exb. 295 is on the letter head of the company which is undated and unsigned nor is it known as to how many of those workmen are confirmed. Said Shri Kurian has admitted that the list at Exb. 295 was prepared by the company but cannot tell as to on what basis or information the company got the names mentioned in Exb. 295. It is therefore not known whether the

names of workers mentioned in Exb. 295 are the members of GMU nor explained as to on what basis the said list has been prepared. He is also not the author of the said list and admitted that he cannot tell as to how many workers from the list at Exb. 295 are confirmed prior to 1-10-1995 and how many are confirmed between 1-10-1995 and 30-9-1998 and how many are confirmed after 1-10-1998.

105. Shri Kurian also admitted that the Undertakings given by the workers while accepting the settlement of 14-4-2001 are not produced before the Court and that he cannot give the reason for non-production. No Charter of demands of the workers, list of number of confirmed workmen of Respondent No. 1, Minutes of negotiations and the Undertakings which led to the said settlement at Exb. 250 have been produced. The said settlement has been signed by persons neither authorised nor empowered to represent the workmen and without any authority nor they have been arrived at or negotiated or entered into by the persons empowered or actually having mandate to represent by the majority of the workmen in the establishment and in terms of the procedure laid down by the law. None of the members of the so called negotiating committee have the authorization of the Union or the members that they claim to represent and therefore the said settlement is not the product of collective bargaining and not signed by the majority or their duly authorised or elected representatives. There is also no Resolution authorizing either Puti Gaonkar or other office bearers of the GMU to enter into the settlement.

106. Shri Kurian has admitted that he did not participate or sign the minutes in the bipartite negotiations or series of discussions referred in Para X of Exb. 250 and is not personally aware as to what transpired in those meetings. He also admitted that one Michael Gracias was the Senior General Manager in MRF Ltd. He has signed the settlement at Exb. 250, however he has not been examined to prove the execution of said settlement. Neither minutes nor authorization are produced on record. He admitted that he does not know as to why the written statement of the company does not state the number of confirmed workmen or the number of workmen who accepted the settlement of 14-4-2001 or 30-4-2001. He admitted that GMU is not a party to the reference No. IT/33/97 or C-IT/4/98 and that the settlement at Exb. 250 is on the Charter of demands raised by the GMU dated 11-9-1996 and that as per Exb. 250, GMEU raised the Charter of demands by its letter dated 15-2-1996 which culminated into reference No. IT/33/97.

107. Shri Kurian has also stated that the company had not played any role in the formation of Co-ordination Committee. He also claimed that two Undertakings were given on 21-4-2001 and one Undertaking was given on 30-4-2001. He also claimed that there are only five Undertakings in his possession which have not been produced on record. He claimed that the names of the said persons who had given undertakings are Agnelo Andrade, Catolino Fernandes, Girish Gawade, Ashok Pednekar and Anand Naik and out of five, only three members namely Girish Gawade, Ashok Pednekar and Anand Naik are shown as members of GMU in the list at Exb. 295. He also admitted that there is no reference to the Co-ordination Committee in the settlement dated 14-4-2001 and it is only with GMU. The Respondent No. 1 has claimed in the written statement that there were 900 workmen as in the year 1998. On page 91 of cross examination, Shri Kurian has stated that in the month of May, 2001 there were 892 confirmed workmen and 34 probationers. The Respondent No. 1 therefore is required to prove that it has more than 450 Undertakings to demonstrate that the settlement dated 14-4-2001 had a binding effect on the entire workforce being signed by the majority which they have failed to prove, either execution or the binding nature of the settlement.

108. Shri Kurian has admitted that Shri Savio Furtado, Shri John M. Fernandes and Shri Pedro Fernandes were each paid Rs. 50,000/- on 21-9-1999 and he cannot explain why the company paid each of the employees the said amount. He, however denied that the said amount was paid to the said workmen as inducement to accept the settlement terms of the company. It is not explained why company paid the said amounts to Savio Furtado and others. The explanation given by him that the said amount of Rs. 50,000/- paid to Savio Furtado and others was the salary advance given to them and recovered from their salaries has not been supported by any evidence nor the Accounts Manager who was working at that time was examined, on the contrary, when confronted with the Pay slips of Savio Furtado and others at Exb. 321, Shri Kurian admitted that no deduction has been shown from the monthly wage towards monthly installment for repayment of salary advance of Rs. 50,000/- paid by them to the said persons. Exhibit 17 which is the reply to the application in support of the representation of Shri Savio Furtado shows that he resigned from the executive committee of the Union immediately thereafter. Moreover, Shri Kurian also admitted that the company was advancing Rs. 24,000/- to only those workmen who had accepted the Settlement

dated 6-4-2011, which clinches the arguments advanced by *Ld. Adv. Shri V. Menezes* that the settlements entered into by GMU and the management was by indulging in unfair practices of taking undue favours from the employer in terms of cash.

109. It is from the above evidence, documents and materials on record clearly show that the Settlement dated 14-4-2001 is without proper authority nor there was any co-ordination committee and was contrary to Rule 58 of the Industrial Disputes (Central) Rules, 1957. There was no proper authorization nor any collective bargaining or discussion before arriving at the settlement. There were no actual negotiations, nor any Charter of demands filed nor made any proposal on behalf of the workmen. The settlement was signed by the persons having no bargaining power and what was accepted was not by way of collective bargaining. The so called committee members indulged in corrupt practices of taking undue favours from the employer in terms of cash. The settlement was unfair and unjust as Charter of demands including change of working conditions of the workmen was pending. The Settlement dated 14-4-2001 which allegedly covered two periods from 1-10-1995 to 30-9-1998 and the period from 1-10-1998 to 30-9-2002 was arrived at only to nullify the proceedings pending before the Tribunal including reference No. IT/33/97.

110. There is no evidence other than *Shri Kurian* led by Respondent No.1 nor *Shri Savio Furtado* and others stepped into the witness box. *Shri Kurian* has not attended any of the meetings that led to signing of the settlement nor the terms of the settlement proved. The Settlement dated 14-4-2001 at the most is a settlement under Section 2(p) of the Industrial Disputes Act and covers only the members of GMU as admitted by *Shri Kurian* at Page 84 of the cross examination where he has stated that as per settlement at Exb. 250 it covers only the members of GMU as on 14-4-2001. Needless to mention, the burden of proving the execution, applicability, compliance of Rule 58 of Industrial Disputes (Central) Rules, 1957 and fairness of the settlement have not been discharged by Respondent No. 1. Once the Respondents have failed to prove that the settlement was duly signed by the persons authorised to sign on behalf of the workmen by a resolution to that effect and have complied provisions of Rule 58 of the Industrial Disputes (Central) Rules, 1957, the Settlement dated 14-4-2001 cannot be said to be just, fair and a valid settlement nor it is binding on Complainant Union. The discussion on the other Settlements dated

30-11-02, 27-11-06 and 6-4-11 is not required at this stage as they do not refer to the period covered by the complaint. In any event, the said settlements would be binding on the members of GMU only.

111. The materials on record including evidence led by the parties are indication of the fact that the settlements referred above including the Settlement dated 14-4-2001 are neither just, fair or proper nor they are binding on the complainants, more particularly when they have not been arrived in terms of the procedures laid down by law. The settlements including the Settlement dated 14-4-2001 have not been arrived at or negotiated by the persons or representatives empowered or actually having the mandate to represent by the majority of the workmen in the factory. Moreover, none of the members of the purported negotiating committee in the said settlements have authorization of the Union or the members they claim to represent. The Respondent No. 1 having failed to prove that the Settlement dated 14-4-2001 was signed by the persons authorised to sign the same on behalf of the workmen by a resolution to that effect or that Rule 58 of the Industrial Disputes (Central) Rules, 1957 has been complied or that the alleged Co-ordination Committee has been properly constituted or that they have played a role in the negotiations, it cannot be said that the said settlement was fair, legal and proper and that it is binding on the complainant. Once the Respondent No.1 has failed to prove legality and fairness of the said settlement, it cannot be said that the allegations/contentions in the complaint are covered by the said settlements and that such settlements are binding on the Complainants. It is thus issue No. 3A is answered in negative.

#### *Issue No. 1:*

112. *Ld. Adv. Shri V. Menezes* has submitted that the Settlement dated 2-5-1984 at Exb. 68 specifically provides that unless it is required by the management, on a request and by mutual agreement of the parties, certain departments only would be run on seven days in a week, thereby implying that all departments were six day running departments. He further submitted that the notices produced in evidence at Exb. 173 colly, also clearly specify that whenever an extra shift was required to be run on a Sunday, the same was done by consent. Exhibit 67 are points raised by the management for discussion along with the Charter of demands and point No. 14 is with respect to running of the full plant for seven days, thereby implying that the full plant was as on 7-2-1996 run for six days. He also submitted that *Shri T. M. Kurian*



admits in his evidence at page 105 that certain departments were run for seven days, if necessary, by mutual agreement between the Union and the management and also admitted the contents of the Notices at Exb. 173 colly. According to him the settlement of 14-4-2001 specifically changes the system to seven day running thereby signifying that the seven day running was not the system at the time reference No. IT/33/97 was pending before the Tribunal.

113. On the converse, Ld. Adv. Shri G. K. Sardesai has submitted that the Party claimed that they represent overwhelming majority and there are about 970 workmen as on filing of the complaint which was filed on 1997 and that GMU was formed in the year 1996. He also stated that in the complaint it is mentioned that the Union is the sole bargaining agent which is denied by the employer. In any event, majority Union may be sole bargaining agent but does not represent entire workforce. There is no evidence that GMEU represents overwhelming majority. The Complaint does not mention who are aggrieved workmen on account of change in service conditions. There are no pleadings that workmen who are aggrieved are the persons concerned in the dispute. There are no pleadings nor evidence that the workers who are aggrieved are the persons whose disputes are pending. There is no evidence that workmen assuming to be concerned are the members of the Union. There are also no pleadings in the complaint as to what prejudice is caused to the workmen. None of the workmen have stepped and alleged that their service conditions were violated. He also submitted that the transfers in Bladder Fixing Department are as per the appointment letter and the names of those who are transferred are not referred to in the letter dated 20-9-1997. There are also no averments in the pleadings as to who are the workmen who have been transferred nor they are the members of the Complainant Union. According to him, running of the 7 day working Department was provided in 1984 settlement; as admitted by Rohidas Naik in the cross examination.

114. Ld. Adv. Shri G. K. Sardesai has further submitted that the workmen from 'Leave Reserve Group' as referred in clause 1(e) of Settlement dated 16-10-1976 are liable to undertake work in any place wherever opportunity exists on a shift to shift basis. The Company has invoked the transfer clause of transferring workmen from one Department to another as per the appointment letter. The letter dated 28-02-1997 while making an allegation does not state which are the Departments other than Band Building Department which changed into

seven day Departments. Out of 24 Departments, 18 Departments did not have seven day working. If the transfer to other Departments is permissible under letter of appointment and if it is contended that they are orally directed to report for work or that though original Department of bladder Fixing was running for seven day, the workmen should work for six days in Band Building Department, it will at the most amount to breach of terms of appointment and particularly clause dealing with transfer and may give rise to industrial dispute and cannot be construed as alteration in service conditions.

115. Ld. Adv. Shri G. K. Sardesai has further submitted that the workmen are entitled to raise industrial dispute but it will not amount to change in service conditions. Breach of settlement or contract has independent remedies and cannot be challenged on the grounds of violation in service conditions. In any event, if the terms of conditions of service includes weekly off, an employee whichever Department is transferred to his original terms and conditions is fastened to him. In the event, if company gives different weekly off, he will contend that his conditions of service are altered. Shri Rohidas Naik at Para 15 stated that an employee so transferred from Bladder Fixing Department of 7 day to Band Building Department of 6 day is entitled to remuneration under clause 4(b) of the settlement at Exb. 68. In that event, it is a money claim and does not entitle to claim that there is alteration in condition of service. He further submitted that the pay slip at Exb. 327 for the month of April 2001 at page No. 130 show that Piedade Travasso has accepted the benefits of the settlement and that Piedade Travasso should have stepped in the witness box and stated that he is interested in pursuing the complaint.

116. Ld. Adv. Shri G. K. Sardesai has further submitted that misconducts are not part of conditions of service and that they are part of disciplinary procedures in the Standing Orders and any misconducts dehors Standing Order have their own legal implications. He further submitted the company have started to run entire factory in 7 day system cannot be the subject matter of the present complaint. The only issue before the Tribunal is that there was alteration of change in service conditions of workmen at that particular time and that such action is illegal and the consequences that will follow is only a monetary claim. He further submitted that if at all the workmen are entitled to different piece rate they can definitely claim the actual amount, if they choose to do so. He also submitted that there is no

evidence except a statement that there is a similarity between 48" Calendar and 66" tuber and that how many relievers were granted and when exactly it was discontinued and in what manner it was prejudicial is neither pleaded nor proved.

117. Ld. Adv. Shri G. K. Sardesai further submitted that there is no evidence to show that there was any practice of helpers, who are not permanent workforce carrying the moving table plank in the Band Building Department for repairs nor there is any evidence to show that there was such a practice w.e.f. 20-07-1997 and that the same was discontinued unilaterally. He also submitted that it has not been spelt out what are the new jobs which have been unilaterally created thus resulting in changing assigned job unilaterally nor there is any evidence in support thereof. There is no new Department created and there is no evidence about the same nor there is evidence about the transfer of workmen to such Department. In any event, no evidence has been produced as to what are the jobs which have been abolished unilaterally to downsize the workforce. He further submitted that there is no evidence to show that the abolition of post has resulted in exploitation of the workforce to work longer hours to produce higher number of piece rate. There is also no evidence that new machineries have been installed for the purpose of changing the process of manufacturing or that new jobs have been assigned to the workmen. In support of his contention, he relied upon the case of **Shankar Chakravarti vs Britannia Biscuit Co. Ltd. & Anr., (1979) 3 SCC 371.**

118. It is thus clear that an industrial dispute means any dispute or difference between employers and workmen which is connected with the employment or non-employment or the terms of employment or with the condition of labour, of any person and before any dispute between employer and his employee or employees can be said to be an industrial dispute under the Act, it must be sponsored by a number of workmen or by a Union representing them. It is not necessary that the number of workmen of the Union that sponsors the dispute should represent the majority of workmen. An individual dispute cannot become an industrial dispute at the instance of the aggrieved individual himself. It must be a dispute between the employer on one hand and his employees acting collectively on the other. It must also be borne in mind that Section 33 ensures a fair and satisfactory enquiry of the industrial dispute undisturbed by any action on the part of the employer or the employee which would create fresh

cause for disharmony between them and that during pendency of an industrial dispute, status quo should be maintained and no further element of discord should be introduced. It is thus to be seen whether there is contravention of Section 33-A of the Act and whether there is change of service conditions by the employer during the pendency of the main dispute before the Tribunal.

119. The Complainant No. 1 has examined Shri Rohidas Naik, the President of Goa MRF Employees Union. He has reiterated the contents of the complaint filed by him. Para 15 to 32 of the Affidavit pertains to change of service conditions of workmen. Para 22 refers to 7 day running system imposed on all the Department of factory. Ld. Adv. Shri G. K. Sardesai has submitted that the allegations are vague which are denied by the Respondent No.1 and that no evidence has been led on the said allegations. Shri Rohidas in his cross examination has admitted that the workmen sent to the other Department from the Leave Reserve Department would get all the benefits which the other workmen would get depending upon the seniority. He also admitted that the workmen from Electrical Department/Mechanical Department when called to work on staggered or weekly off were paid for those days.

120. Shri Rohidas Naik denied the suggestion that the workmen who have been transferred to Band Building Department were informed by a written shift notice displayed on the notice board requiring them to report on Sunday for work and persons who were transferred to Band Building Department were Piedade Travasso and others. Band Building Department is a six day working Department with Sunday off and that is why they did not report on Sunday. He also stated that the workers are covered by the Settlement dated 2-5-1984 at Exb. 68. He also stated that the workers were called to work on Sundays when they were transferred to Band Building Department which is a six day working Department with Sunday weekly off and that if the above persons had to work on Sunday that is weekly off in Band Building Department, they would have been paid as per Clause IV(B)(3) of Exb. 68. Exhibit 173 colly, are the notices/shift notices showing the staggered off. To the suggestion that all the workers follow seven day working as per settlement dated 14-4-2001, 30-11-2002 and 27-11-2006, he stated that the workers have been pressurized to follow seven day running system pursuant to the settlement. He also explained that they are not parties to the settlement.

121. Shri Rohidas Naik has also stated that by letter dated 8-10-1997, one Shri Piedade Travasso was issued a warning for not reporting for work as per the illegal change imposed on the workmen. Exhibit 134 is the said letter dated 8-10-1997. In the said letter, it was stated that Shri Piedade Travasso has unauthorisedly reported for weekly off day in shift II instead of his normal shift III and that the act of unauthorised entry in the Department on the scheduled weekly off and unauthorisedly reporting to a shift other than his normal one constitute misconduct under Certified Standing Orders of the company and the repetition of such or other acts of indiscipline shall be viewed seriously. There is no dispute that the matter pertaining to Shri Piedade Travasso has been settled with the management and all the disciplinary action against him was withdrawn but that does not disprove the fact that Shri Piedade Travasso, Meghnath Tari and C. M. Kuttappa were transferred to Band Building Department and that they did not report on Sunday for work which led to action against them.

122. Needless to mention, the complaint have been filed with respect to periods from 1-10-1995 to 30-9-1998 which cover the Settlement dated 2-5-1984 at Exb. 68. The settlement dated 2-5-84 at Exb. 68 provides as per clause IVB as follows:

**B. WAGES FOR WORKING ON WEEKLY OFF DAY/PAID HOLIDAYS/SUNDAYS:**

(1) It is agreed that the workmen required to work on their weekly off shall be paid 1/3 of the wages of (Piece Rate FDA and VDA, Service Weightage/Service benefits only) for such day over and above their normal wages for that day; (2) When workmen are required to work on a company declared paid holiday, they will be paid one normal wage and one and half times extra wage (Piece Rate FDA and VDA, Service Weightage/Service benefits only) but without a substitute holiday. If a substitute holiday is given, they will be paid one normal wage and one half extra wage for that day; (3) if any permanent workmen is called to work on Sunday, he will be paid an allowance of 25% of (Piece Rate FDA and VDA, Service Weightage/Service benefits only) for that day.

123. There is also no dispute that clause 4, page 12 of Settlement dated 2-5-1984 at Exb. 68 reads as follows:

**3. SEVEN DAY RUNNING OF CERTAIN DEPARTMENTS:**

It has been agreed by the Union that Tyre Curing, Tyre Finishing, Post Inflation, Q.C. Inspection and Despatch Department will be kept running for seven days in a week, if necessary. The details of the working system of each department, in case they work for 7 days, are attached as Annexure 7.

124. There cannot be any quarrel that above Clause IV B has to be read with clause 4, page 12 of the Settlement dated 2-5-1984 at Exb. 68 which provides for seven day running of certain Departments which states that Tyre Curing, Tyre Finishing, Post Inflation, Q.C. Inspection and Dispatch Department will be kept running for seven days in a week, if necessary and the details of the working system of each Department, in case they work for 7 days, are attached as Annexure 7. It therefore reveals that the Settlement dated 2-5-1984 at Exb. 68 specifically provides that unless it is required by the management, on a request and by mutual agreement of the parties, certain Departments only would be run on seven days in a week, thereby implying that all Departments were six day running Department. The notices produced on record at Exb. 173 colly, clearly specify that whenever an extra shift was required to be run on a Sunday, the same was done by consent. The said notices clearly show that after discussion with the Union, it was agreed that all its members from Banbury/RM Stores/Chemical Compounding & Testing area, etc. will report for work in all three shifts on Sunday or that the above arrangement of working on Sunday has been discussed with and agreed to by the Union.

125. The witness of the management Shri Kurian has admitted on page 104 of the cross examination that with reference to clause VI (2) of Settlement dated 14-4-2001 at Exb. 250 extensions of seven days working system to all Departments is a change. Shri Kurian on Page 105 of the cross examination has also stated that the Department such as Banbury, Extruder, 68" and 48" Calendar, Banner and Band Building, Bead and Tyre Building were the Departments which were working for six days and had Sunday off. He also stated that for seven days working Departments the workers used to get staggered off in a week which could also be a Sunday. Shri Kurian with reference to Clause 4, page 12 of the settlement dated 2-5-84 at Exb. 68 has stated that the Departments such as Tyre Curing, Post Inflation, Q.C. Inspection and Despatch Department were kept running for seven days in a

week, if necessary by mutual agreement between the Union and the company. He also stated that Dispatch Department is also called Shipping and that he does not have any records or minutes to show as to when it was mutually decided that it was necessary to run the Department for seven days in a week.

126. Shri Kurian has also admitted on Page 179 onwards of the cross examination that as in the year 1997, the Banbury Department which also consists of Raw Material Stores, Chemical Compounding and testing area were running for six days in a week with Sunday off. He also admitted that according to Notice dated 12-6-1997 at Ex. 173 colly, it was stated that after discussion with Party I, it was agreed that all members of Party I from Banbury Department, for reasons stated in the letter would report for work on Sunday, 15-6-1997 on all three shifts. Similarly, by notice dated 27-6-1997 for the same reason, Party I agreed that its members working in the Banbury Department would work on Sunday, 29-6-1997 on all three shifts. He also admitted that the workers who work on the above referred two Sundays were given a compensatory off on another day and that there existed a system where the workman whose Department got Sunday off i.e. six days running, after negotiation with Party I they would be requested to work on particular Sunday, for which they would be given a compensatory off on any other day.

127. Shri Kurian has also admitted that by notice dated 23-5-1997, in Exb. 173 colly, it was agreed by Party I that the workmen in Banbury Department would work on Sunday, 25-5-1997 instead of Saturday, 24-5-1997 since there was a power cut between 7 am. and 5 pm. on Saturday and that by notice dated 18-5-1997 under Exb. 173 colly, it was agreed with Party I that the Department running in six days system would run on Sunday, 19-5-1996 in first shift. He further stated that the Departments referred to in that notice are those other than the ones that would normally run in seven days running system i.e. Curing Department, Engineering Department, Shipping Department and Final Inspection or Quality Assurance Department and that the workmen who normally would work on six days running Department would be paid overtime on Sunday, 19-5-1996. Similarly, notices dated 27-4-96 and 19-8-95 under Exb. 173 colly, referred to workmen working in six days running Department who respectively worked on Sunday 28-4-96 and Sunday 20-8-95 after being discussed and agreed to by Party I, for which those workmen who work normally six day running Department would be paid overtime for working on Sunday.

128. Similarly, Shri Kurian has not disputed that by notice dated 11-8-95 under Exb. 173 colly, it was recorded that after discussion and agreement with Party I in order to enable the employees to have two consecutive holidays on 14-8-95 and 15-8-95, it was agreed that Sunday 13-8-95 would be regular working day for six days running Department and 14-8-95 would be given as a weekly off for those Department. He further concurred that 36" Calendar Department was a six day running Department in 1995 and had a Sunday off and by notice dated 2-6-95, under Exb. 173 colly, it was recorded that after discussion and agreement with Party I, for reason stated in the notice and to make up for anticipated loss, the six day running Department including Banbury Department No. 1 & 3 would run on overtime in shift I & II on Sunday 4-6-95. He also admitted that by notice dated 4-3-95 under Exb. 173 colly, it is recorded that after discussion and agreement with Party I to avoid loss in production in Preparation II Department which was running in six day running system and in 36" Calendar Department the same would run on overtime in first shift on Sunday, 5-3-95 and that under the above notices, the workmen working in six day running Department would be required to come for only that shift to which they were assigned for that week and workmen who were assigned a shift not specified in the notice got the Sunday off normally.

129. Shri Kurian has also admitted that by notice dated 3-2-95 at Exb. 173 colly, it is recorded that after discussion and agreement with Party I to avoid loss in production, the Departments which were running in six day running system would be run on overtime wage in shift I on Sunday 5-2-95 and that the Departments specified in notice dated 14-1-95 under Exb. 173 colly, are six day running Departments and after agreement with Party I those workmen in the Departments mentioned therein who were assigned to work in Shift I in that week were requested to work on Sunday 15-1-95. He also concurred that by that notice the only workmen who were working on the machines specified against each Department would be required to work on 15-1-95 and would be paid at overtime rates for that shift and that by notice dated 3-6-94 under Exb. 173 colly, the Departments mentioned therein which were running in six day with Sunday off or after agreement with Party I, due to shortfall of green tyres for curing were requested to work on 5-6-94 in shift I for which those workmen would be paid overtime wages.



130. Shri Kurian also admitted that the tyre building unit is the Assembly Department while the other five Departments mentioned in the notice dated 3-6-94 under Exb. 173 colly, are Departments which manufactured various components or pieces for assembling of the tyre in the tyre building Department and that by notice dated 16-12-94, after agreement with Party I, the six day running Departments were requested to work on days and shifts specified in the notice since 25-12-94 was declared as a Christmas Paid Holiday. He also accepted the fact that by notices dated 30-12-94, 18-11-94, 4-11-94, 20-10-94, 16-9-94 and 15-7-94 under Exb. 173 colly, after discussion with Party I and due to shortfall in green tyre for curing, workmen who worked in shift I in that week in Departments running in six day running system were requested to work on the Sunday, specified in those notices.

131. Shri Kurian has not denied the fact that by letter dated 14-10-94 under Exb. 173 colly, Party II had written to Party I requesting concurrence for running Banbury Department which was otherwise running in six day running system with Sunday off, to be run on two shifts on Sunday 16-10-94 while other six day running Department were requested to be run in one shift on that same Sunday, but he feigned ignorance as to whether the management would always write to the Union requesting the Departments working in six day running system with Sunday off to work in a specific shift on a Sunday but claimed that there was a system of having a discussion with Union each time such change was required by Party II.

132. Shri Kurian also concurred that notices dated 8-10-94, 22-7-94, 29-7-94, 20-8-94, 11-6-94, 15-7-94, 15-1-93 and 19-2-93 under Exb. 173 colly, are all notices put up after obtaining consent of Party I to run, for reasons specified in each notice, six day running Department with Sunday off system in the shift and on the Sunday specified in those notices. He however was unable to say on which day the entire plant started running on a seven day running system with weekly staggered off but admitted that the shift notices put up by Party II do not normally contain the date on which they are issued but would state the date with effect from which the workmen named therein are required to attend a shift and that all the notices produced under Exb. 173 colly have been put up by Party II. He has also admitted to be true the fact that prior to changing the system of running the entire plant in a seven day running system, if a workmen was transferred from a seven day running Department such as Curing Department to six day

running Department having Sunday off such as Tyre Building Department they would require him to work seven days in the new Department i.e. also on Sunday notwithstanding the fact that, that Department was a six day running Department which is indicative of the fact that the workers were forced to come on Sundays.

133. Shri Kurian also stated that those workmen who were working prior to transfer in a seven day running Department with weekly off, after transfer to a six day running Department with Sunday off, would be required to work for six days with a weekly off on any day of the week which was assigned to him in his earlier Department, which the management cannot do, which clearly shows that the service conditions has been changed. He has also stated that the Bladder Fixing Department was a seven day running Department and Band Building was a six day running Department with Sunday off and if a workmen was transferred from Bladder Fixing Department which ran on seven days including Sunday with weekly off to Band Building Department which work on six days with Sunday off, such a workman would be required to work on Sundays in Band Building Department with a weekly staggered off and such a workman would normally be given a shift notice stating on which Sundays he was required to work and that the shift notice is not required as he has been assigned a particular day as a weekly off and he has to come and work on remaining other six days which is de hors the conditions stipulated in the Settlement dated 2-5-1984 at Exb. 68, which altered the service conditions of the workmen.

134. Shri Kurian further admitted that in every department a shift notice would be put up to state in which shift a particular workmen has to report in and that the workmen who transferred from Bladder Fixing Department to Band Building Department would follow his weekly off from Bladder Fixing Department but would follow the shift to which he is assigned in a notice stating so for the Band Building Department. He also stated that from 1984 Settlement there was no change to seven day running system to those departments that continued in six day running system until Settlement dated 14-4-2001, which changed the system to running the entire plant on seven day running system. He feigned ignorance as to on which day the entire plant started running on seven day running system with weekly staggered off but claimed that 2001 settlement was effective from Oct. 1995. He also admitted that prior to 1984 settlement apart from Engineering Department, all other Departments ran on six day running system with Sunday off.

135. Shri Kurian also admitted that as per clause 4 of Settlement dated 2-5-1984, departments listed in Annexure VII thereto would be run for seven days and that Tyre Curing Department, Tyre Finishing Department, Post Inflation Department, Quality Control Inspection and Despatch Department will be kept running for seven days in a week, if necessary and that above Departments would be run for seven days only if there was a necessity. He also stated that the execution of the transfer order would be by oral instructions given by the Supervisor to the concerned workmen from one Department to another. He also admitted that when they change the weekly off of a workman from Bladder Fixing Department or any other seven day running Department, they do not give any written notice to the workman but tell them orally and this change would reflect on his department shift notice but he is unable to produce such shift notices, which clearly indicate change in service conditions of the workmen. The notices issued to the workmen at Exb. 173 colly, clearly show that the practice was always by a notice with a reason, which fortifies the case of the Complainant that as per Settlement dated 2-5-1984 unless it is required by the management on a request and by mutual agreement by the parties, certain departments would be run on seven days a week and whenever an extra shift was required to be run on Sunday the same was done by consent, which is also admitted by witness of the management, Shri Kurian.

136. Importantly, the management has raised Points for discussions along with Charter of demands at Exb. 67 dated 7-2-1996 and at Point No. 14, reference has been made to seven days running for full plant. It states that in order to increase productivity and generate more employment, the full plant will run on all seven days of a week following a staggered weekly off system for the workmen whenever required and that eight hours running of the department machinery whenever possible will be implemented which clearly imply that prior to the Points/Issues proposed by the management dated 7-2-1986, the full plant was running for six days. Shri Kurian also admitted that certain Departments were run for seven days, if necessary by mutual agreement. Shri Kurian has admitted in cross examination that by letter dated 7-2-96 at Exb. 67, Party II had written to Party I specifying therein the points proposed by Party II to be taken up for discussion and in the above referred letter the Party II, at clause 14 thereof had requested that the full plant should run on all seven days of the week following a staggered weekly off system.

137. The contents of the notices at Exb. 173 colly, produced by the complainants are not disputed by Shri Kurian in the cross examination. In fact, Shri Kurian has admitted that such notices have been issued by the management in consultation with the Union which clinches the case of the complainants that the change in service conditions has been effected by the management after the settlement allegedly executed by the management dated 14-4-2001 at Exb. 250. Even though settlement dated 2-5-1984 provides for payment of overtime to workmen requested to work on Sundays, the said clause can be interpreted only to mean that the payment was to be made after agreement upon extra day of work and not otherwise as has been rightly pointed out by Ld. Adv. Shri V. Menezes for Complainants. The Settlement dated 14-4-2001 which according to Shri Kurian covers the earlier period, specifically changes the system to seven day running during the pendency of the reference filed by the Party I bearing reference No. IT/33/97. He also admitted at page 109 of the cross examination that there has been no change in clause 4 of Settlement dated 2-5-1984 at Exb. 68. It was also suggested to Shri Rohidas Naik on page 30 of cross examination that pursuant to Settlement dated 14-4-2001, all the departments were made seven day working, thereby signifying that seven day running system was not the system being followed at the time of above reference pending before the Tribunal.

138. What therefore emerges from the deposition of the witnesses and the documents produced on record is that the management created fresh cause for disharmony between them and the workers concerned which led to the present dispute as during the pendency of the industrial dispute bearing reference No. IT/33/97 changed the status quo by introducing seven days running system when the Tribunal was seized of the dispute concerning the Charter of demands filed by the Union. The management had also entered into a Settlement dated 14-4-2001 at Exb. 250 with Shri Puti Gaonkar and others who was not the member of the Union or its employee in order to defeat the object of Section 33 of the Act which inevitably introduced further complications and discord between the parties. There was no justification for entering into the Settlement dated 14-4-2001 covering the two disputed periods from 1-10-1995 to 30-09-1998 and from 1-10-1998 to 30-09-2002 without any negotiations or having authorization from the workmen. There was also no compliance of Rule 58 of Industrial Disputes (Central) Rules, 1957 and therefore, it cannot be

said that the Settlement dated 14-4-2001 was arrived at by following due process of law. The said settlement changes the system to seven days running which system was not in force when the reference No. IT/33/97 was pending before the Tribunal.

139. The contention of Ld. Adv. Shri G. K. Sardesai as stated above therefore cannot be accepted. The Complainants have established the violation of Section 33 of the Act. The aggrieved workers have been identified and that they are the members of the Union that have raised the dispute pending before the Tribunal bearing reference No. IT/33/97. What is relevant as can be culled out from the judgment of Castrol India Ltd. is that the office bearers of the Union have to be duly authorised by the workmen or acquainted with the facts of the case. There is no dispute regarding the letters at Exb. 75, 77, 78, 80, 81, 96, 132 to 139, 152 and 154, so also it is admitted by Shri Kurian that Shri Rohidas Naik was acquainted with the facts of the case. The submission of Ld. Adv. Shri G. K. Sardesai that there are no pleadings nor evidence that the workers who are aggrieved are the persons whose disputes are pending, so also that the workmen are entitled to raise industrial dispute but that would not amount to change in service conditions and that breach of settlement or contract has independent remedies and cannot be challenged on the grounds of violation in service conditions, along with the other grounds raised above, cannot be accepted. The reliance placed on the case of **Shankar Chakravarti**, supra is not applicable to the case at hand as there are sufficient pleadings coupled with documents to substantiate the allegations made in the complaint. Moreover, the above case turns on its own facts and cannot come to the aid of the Respondents that there are no pleadings and proof in support of the case of the Complainants. It is therefore, the above contentions of Ld. Adv. Shri G. K. Sardesai pales into insignificance.

140. The submission of Ld. Adv. Shri M. S. Bandodkar that Shri Rohidas Naik could never act as the President of the Union or that there is no provision in the Constitution of the Union to call General Body Meeting and that Shri Rohidas Naik has not acted as per the Constitution of the Union and that as per the Bye-laws, the President has only power to call special meetings of the executive committee of the Union and therefore calling of the meetings including filing of the complaint or signing correspondence is not permissible, so also that Shri Rohidas Naik has resigned from the membership of the Union and became the member

of the Sabha and that industrial dispute can only be raised by the Union to which the workmen is the member, also cannot be accepted as discussed above.

141. The Complainant have thus proved Para 23(a) of the complaint that the workmen working in a Bladder Fixing Department are transferred to Band Building Department which has a six day working pattern; Para 23(b) that the workmen who have been transferred to Band Building Department have been orally reported on Sunday for work inspite of the same been a six day working Department with Sunday off; Para 23(c) that by letter dated 8-10-1997, one Shri Piedade Travasso issued a warning for not reporting for work for illegal change imposed on the workmen; Para 23(e) that by notice dated 3-9-1997 at Exb. 173 colly, the Respondent No.1 illegally changed the service condition by increasing the misconduct therein; Para 23(f) that in the previous settlements, only a few Departments were seven day running Department and the company has been running the entire factory in the seven day system without any notice of change whatsoever or without seeking the permission of the Tribunal and Para 23(g) that the seven day running system is imposed on all the Department of the factory.

142. The Complainants have also proved Para 23(h) of the complaint that the Complainants are being unilaterally transferred from one Department to another without discussion with the Union; Para 23(i) that the transfer are imposed to open the workmen to disciplinary action on the ground of slow work; Para 23(j) that the shifting of weekly off from Sunday and changing six day working Department to seven day running have been affecting the workmen and Para 23(k) that 48" Calendar Department the process followed is 6" Tuber of reliever at meal time was discontinued unilaterally. It is thus the complainants have proved that Respondent No. 1 changed the service conditions of the workmen in contravention of Section 33 of the Industrial Disputes Act, 1947. The unilateral action of transfer of workmen on the part of Respondent No. 1 and change of service conditions as referred in Para 23 of the complaint is in contravention of long standing practice, so also, the settlement dated 2-5-1984 at Exb. 68 and without the permission of the Tribunal where reference No. IT/33/97 is pending or by issuing notice of change to the workmen under Section 9-A of the Industrial Disputes Act. Hence, the issue No. 1 is answered in the affirmative.

**Issue No. 2:**

143. Needless to mention, the complainants have satisfactory proved the allegations made in Para 23 of the complaint as stated above thereby implying that the Respondent No. 1 has changed the service conditions of the workmen in contravention of Sec. 33 of the Industrial Disputes Act, 1947 during the pendency of the reference bearing No. IT/33/97 for Charter of demands before the Tribunal. The Complainants have thus shown that there has been violation or contravention of the provisions of Section 33 of the Act and that the acts complained of are justified. The Complainant No. 1 having proved violations of the provisions of Section 33 of the Industrial Disputes Act, by Respondent No.1 thereby changing the service conditions of the workmen during the pendency of the said reference, it can be safely said that the action of the Respondent No.1 in changing the service conditions of the workmen as pleaded in Para 23 of the complaint is clearly illegal and unjustified. The complainants therefore have proved issue No. 2 in affirmative. Hence, the same is answered accordingly.

144. In the result, I pass the following:

**ORDER**

1. The complaint stands allowed.
2. It is hereby held that the Respondent No. 1 has illegally changed the service conditions of workmen of Complainant Union.
3. The Respondent No. 1 shall cease and desist from changing the service conditions of workmen of Complainant Union and shall not implement the 7 day running system on the Departments hitherto run on 6 day Sunday off system and shall henceforth follow the terms and conditions of the Settlement dated 2-5-1984 at Exb. 68 as regards to service conditions of members of Complainant Union.
4. No order as to costs.
5. Inform the Government accordingly.

Sd/-  
(Vincent D'Silva)  
Presiding Officer,  
Industrial Tribunal and  
Labour Court.

**Notification**

No. 28/9/2017-LAB/Part-I/233

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 28-02-2017 in reference No. IT/21/16 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Georgina Saldanha*, Under Secretary (Labour).

Porvorim, 11th April, 2017.

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IN THE INDUSTRIAL TRIBUNAL AND  
LABOUR COURT

GOVERNMENT OF GOA

AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding  
Officer)

Ref. No. IT/21/16

Workmen,

Rep. by the General Secretary,

Gomantak Mazdoor Sangh,

G-5, Macedo Apartments,

Tisk, Ponda, Goa-403 401. ... Workmen/Party I.

V/s

M/s. Elsteel Modular Products

(India) Pvt. Ltd.,

Plot No. 3, Phase-III,

Honda Industrial Estate,

Honda, Satari, Goa-403 530. ... Employer/Party II.

Workmen/Party I represented by Shri P. Gaonkar.

Employer/Party I represented by Ld. Adv. Shri P. Agrawal.

**AWARD**

(Delivered on this the 28th day of the month of  
February of the year 2017)

By Order dated 02-02-2016, bearing No. 28/47/2015-Lab/75, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

“(1) Whether the action of the management of M/s. Elsteel Modular Products (India) Private Limited, Plot No. 3, Phase III, Honda Industrial Estate, Honda, Satari, Goa, in not conceding to the following demands raised by the Gomantak Mazdoor Sangh, vide their letter dated 25-11-2014, is legal and justified?



**CHARTER OF DEMANDS****Demand No. 1: Pay Scales:****GRADES:**

Grade-I : 3150-115-3725-120-4325-125-4950-130-5600-135-6275-140-6975-145-7700.

Grade-II : 3300-125-3925-130-4575-135-5250-140-5950-145-6675-150-7425-155-8200.

Grade-III : 3450-135-4125-140-4825-145-5550-150-6300-155-7075-160-7875-165-8700.

**Demand No. 2: Flat Rise:**

Union demands that all the workmen shall be given the flat rise at the rate of Rs. 3000/-. The said amounts of Rs. 3000/- shall be added to the existing basic and thereafter fitted in the respective revised pay scale at the higher stage.

**Demand No. 3: Seniority increments:**

Union demands that the workmen should be given Seniority increments as mentioned below:

Service upto 3 years : One Increment.

Service above 3 years : Two Increments.  
and upto 7 years

Service above 7 years : Three Increments.  
and upto 10 years

**Demand No. 4: Fixed Dearness Allowance (FDA):**

Union demands that the existing FDA shall be revised by adding Rs. 2000/- in the existing FDA.

**Demand No. 5: Variable Dearness Allowance (VDA):**

Union demands that the VDA shall be paid at the revised rate of Rs. 3/- per point rise beyond 4500 points (1960=100) the computation of VDA shall be made quarterly based on the average consumer price index of preceding quarter.

**Demand No. 6: Transport facility:**

Union demands that the free transport facility should be provided to those workmen who are presently not provided with this facility. The detail routes shall be given at the time of negotiations.

**Demand No. 7: Paid Holidays:**

Union demands that all the workmen shall be granted paid holiday at rate 16 days per year. Union further demands that the festival holidays that fall on Sundays shall be changed to next day or one day earlier, which shall be finalized in consultation with the Union.

**Demand No. 8: Leave:**

Union demands that all the workers should be given leave on following basis:

(A) **Earned Leave (EL):** Union demands that all the workmen should be given earned leave at the rate 35 days E.L. per year with accumulation up to 120 days and leave shall be allowed to take 10 times in a year.

(B) **Casual Leave:** Union demands that all the workmen should be given casual leave at the rate of 15 days per year with encashment facility. The workers shall be allowed to avail half day casual leave.

(C) **Sick Leave:** Union demands that all the workmen should be given sick leave at the rate of 15 days per year and accumulation up to 60 days.

**Demand No. 9: Leave Travel Assistance (LTA):**

Union demands that LTA should be paid at the revised rate of 5000/- per annum with minimum of four earned days leave. The amount shall be paid one week before the commencement of leave.

**Demand No. 10: Loan:**

Union demands that interest free loan of Rs. 1,00,000/- should be granted for House repair and construction of House and to meet the expenses towards the purchase of households articles or marriage of self or his/her family member, scooter, etc.

**Demand No. 11: Festival Advance:**

Union demands that all the workmen shall be granted festival Advance twice in a year at the time of festivals of Rs. 5000/- each to meet the additional expenses incurred by him for such festival. The said amount shall be recovered in six equal installments.

**Demand No. 12: Bonus/Ex-gratia:**

Union demands that all the workers shall be paid Bonus/Ex-gratia at the rate of 20% of gross wages every year before Diwali.

**Demand No. 13: Shift Allowance:**

Union demands that those workmen who are working in the shift shall be paid shift allowance at the rate of Rs. 50/- per day work in second shift and Rs. 100/- per day work in third shift.

**Demand No. 14: Canteen subsidy:**

Union demands that all the workmen shall be paid canteen subsidy @ Rs. 1000/- per month.

**Demand No. 15:** The Union reserves the right to amend, add, delete any demands during the time of negotiation.

- (2) If the answer to the issue No. (1) above, is in the negative, then, to what relief the workmen are entitled to?"

2. Upon receipt of the reference, it was registered as IT/21/16 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim statement at Exhibit 4 and Party II filed a Written statement at Exhibit 6.

3. In short, the case of the Party I is that the Party II is a industrial establishment having manufacturing of steel modular products and is earning huge profits every year. The Party I submitted the Charter of demands vide their letter dated 25-11-2014 and on receipt of the said demands, the Party II refused to initiate negotiations and accordingly an industrial dispute was raised. The wages presently paid to the workers are meager and not sufficient to meet day-to-day needs of the workers and hence, their demands for wage revision are just and proper. The cost of essential commodities have reached to the sky and hence wages paid to the workers are losing the purchasing capacity and in order to maintain the value of wages and purchasing capacity, the demand of revision of wages and allowances is just and proper and therefore the Tribunal may declare their demands as genuine and reasonable and also grant revision of wages and allowances w.e.f. 1-1-2015.

4. In the written statement, the Party II has stated that the demands of Party I are wholly unjustified, unrealistic and are liable to be rejected. The Party II had already given sufficient revision in wages in September 2014 and agreed to give revision in September 2015 depending upon financial status of Party II. None of the demands have been justified by Party I. The financial position of the Party II is not sound to consider any demands of the Party I. The production of the Party II has been reduced considerably thereby reducing the turnover and therefore all the demands of the Party I be rejected with costs.

5. The Party I filed a rejoinder at Exhibit 7 denying the case put forth by Party II in the written statement.

6. Issues came to be framed at Exhibit 10.

7. In the course of further proceedings, the parties filed an application dated 13-02-2017 along with a copy of Memorandum of Settlement dated 13-02-2017 with Annexure 'A' signed under Section

2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 between the management of M/s. Elsteel Modular Products India Private Limited, Honda and their workmen represented by the Gomantak Mazdoor Sangh at Exhibit 25 colly, stating that their dispute is conclusively settled and prayed for an award in terms of settlement.

8. The terms of Settlement are as follows:

**(1) Applicability:**

It is agreed between the parties that the terms of this settlement shall apply to all permanent workmen of the company who are on the rolls as on the date of signing of this settlement. The terms of this settlement shall not be applicable to the workmen who are not on the rolls of the Company as on the date of signing of this settlement.

**(2) Period of Settlement:**

- 2.1 The Settlement shall cover the period from 01-09-2014 and shall continue to remain in full force and effect until it is terminated with the consent of both the parties.
- 2.2 The fitment of each workman showing the distribution of revision of wages and allowances is attached herewith in Annexure "A".
- 2.3 The revised salary will be incorporated in their monthly salary from the month of September 2016 and the arrears arising out of this settlement shall be paid on or before 28th February, 2017.

(3) Management will be implementing performance measures for all the workmen which is as follows:

- 3.1 Performance measurement will be based upon the scoring system based on the scale of 1 to 5.
- 3.2 Score of each workman will be displayed every month on notice board.
- 3.3 Scoring will be based upon parameters like

Score	Parameters
1.	Attendance/Absenteeism
2.	Machine Stop and Start Time
3.	Behaviour and Honesty
4.	Machine setting
5.	Team work and Idea sharing

(4) It is agreed between the parties that rates of wages namely Basic, FDA, HRA, Conveyance Allowance, CEA of the workmen as on 01-09-2016

shall be taken as a base for grant of annual revision from 01-09-2017 a flat rise of Rs. 1000/- to each workman shall be added to the wages of the workmen every year w.e.f. September 2017. This flat rise of Rs. 1000/- is applicable for three years from September 2017.

(5) It is agreed between the parties that the Company shall pay an amount of Rs. 20,000/- (Rupees Twenty thousand only) to each of the permanent workmen who are covered under this settlement in satisfaction of the revision demanded in the Charter of Demands dated 25-11-2014 in reference No. IT/21/16.

(6) It is agreed between the parties that in view of yearly revision based on performance and productivity agreed as above, the workmen/union shall not raise any further Charter of Demands involving financial liabilities against the Company for next three years from the date of signing of this agreement. However a flat rise of Rs. 1000 INR will be given to all the permanent workmen as annual revision which includes annual increment apart from the performance appraisal as mentioned in clause 4 above.

**(7) Productivity Measures:**

- (i) It is agreed by and between the parties that the revised wages and allowances is on the assurance of achieving productivity targets of the machine capacity, per working shift, over a period of each calendar month as per the production schedule for the month based on normal working conditions. The workmen have assured to fully co-operate with the management in achieving the set targets per working shift over a period of each calendar month.
- (ii) It is agreed that the management shall have full discretion to interchange manpower from one machine area to another, depending on the requirement of work and the skill as provided in the letter of appointment issued to the workmen.

(8) It is agreed between the parties that effective from 2017 the workmen shall be entitled to 14 days paid holidays in a calendar year. The list of holidays shall be finalized by the following calendar year.

**(9) General:**

- (i) It is agreed that this settlement is a package deal and is in full and final settlement of all the demands covered under the Charter of Demands served on 25-11-2014 and is pending in adjudication under reference

No. IT/21/16 and which are not specifically dealt with herein were discussed and withdrawn as settled and further that during the operative period of this settlement the union/workmen shall not raise, pursue and/or agitate any demands of whatsoever nature whether fully or partially settled herein or any other demand involving financial liability on the company.

- (ii) The union and the workmen appreciate that in order to improve the competitive status of products and profitability, it is necessary for the company to utilize the resources effectively including continual updating technology. In the event of improvement of technology, the manpower required will be suitably fixed. For this purpose, the union and workmen agree to co-operate with the management to achieve efficiency and productivity.
- (iii) The union and the workmen assure full co-operation in elimination of wasteful practices, permitting flexibility in deployment of employees from one work area to another and one department to another.
- (iv) The union and workmen agree to give full co-operation to the management in maintenance of discipline, reduction of absenteeism and adhering to good manufacturing practices and safety regulation. Disciplinary action will be taken against the workmen who will be found guilty for the same.
- (v) If by legislation or otherwise, benefits analogous or similar to these granted under this settlement are introduced by the State or Central Government, the employees will be entitled to opt in favour of the totality of the benefits given by such legislation or by this settlement, whichever is higher but not both.
- (vi) It is agreed that the management, the union and the workmen undertake to maintain good industrial relations and further agree not to support or indulge in unfair labour practices and whenever conflicts of interest arise they shall be resolved in a peaceful and legitimate manner through mutual discussion and/or recourse to legal machinery provide under the law.
- (vii) It is agreed by the union and the workmen that as and when required, to meet the market demand and fulfill the orders, the

workmen shall stay on overtime as and when it is required by the management. Refusal to do so without satisfactory reason shall be treated as the breach of this settlement.

(viii) It is agreed by the union and workmen that they shall start work sharp at the beginning of the shift and shall not waste time in any pretext. Similarly, they shall stop the work at end of the shift. They shall also strictly follow the time specified for lunch and tea break. In the event, they fail to do so again and again, the management shall have the right to deduct wages proportionate to the production time lost.

(ix) All the workmen have requested the management to deduct from their arrears an amount of Rs. 2000/- from workmen towards union contribution and pay the same to Gomantak Mazdoor Sangh through cheque or Demand Draft and the same has been agreed by the management.

(x) It is also agreed by workmen and have requested the management to deduct an amount of Rs. 1000/- from their salary in the month of September 2017 and pay the same to Gomantak Mazdoor Sangh through cheque or Demand.

(xi) It is agreed between the parties that this settlement shall be filed in Reference No. IT/21/16 pending before the Hon'ble Industrial Tribunal of Goa for consent award in terms of this settlement.

9. The above terms of settlement are signed by Shri Kalidas Jadhav—General Manager, Shri Anilkumar Jaiswar—Dy. Manager HR of Party II and Shri Puti Gaonkar—General Secretary, Shri Sadguru Palyekar—President, Shri Sunil Sawant—Vice President, Shri Vishwas Gawas—Secretary, Shri Sahadev D. Gawas—Treasurer, Shri Rupesh Gawas, Shri Jayesh Chodankar, Shri Dayanand Gaonkar, Shri Nikesh Palyekar and Shri Vasu Gawas, members of Party I union.

10. I have gone through the records of the case and the above terms of settlement and I am convinced that the Memorandum of settlement at Exhibit 25 colly, filed by the parties are just and fair and are in the interest of the Workmen/Party I and Employer/Party II and therefore, the same are accepted.

12. In view of above, I pass the following:

#### ORDER

- 1) The reference stands disposed of in view of the Memorandum of Settlement dated 13-02-2017 filed by the parties at Exhibit 25 colly.
- 2) No order as to costs.
- 3) Inform the Government accordingly.

Sd/-  
(Vincent D'Silva)  
Presiding Officer  
Industrial Tribunal and  
Labour Court.

#### Notification

No. 28/9/2017-LAB/224

The following award passed by the Labour Court-II, at Panaji-Goa on 10-03-2017 in reference No. LC-II/IT/14/2015 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of  
Goa.

Georgina Saldanha, Under Secretary (Labour).  
Porvorim, 10th April, 2017.

THE LABOUR COURT-II  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble  
Presiding Officer)

Case No. LC-II/IT/14/2015

Shri Prakash G. Naik,  
Rep. by the President,  
Mandovi Pellets Ltd. Workers Union (Goa),  
C/o. Mandovi Pellets,  
Shiroda-Goa. .... Workman/Party I.

V/s  
M/s. Mandovi Pellets,  
(A Division of Chowgule and  
Company Private Ltd.),  
Near Borim Bridge,  
Shiroda, Goa. .... Employer/Party II.

Workman/Party-I represented by Shri P. Gaonkar.  
Employer/Party-II represented by Adv. Shri G. K.  
Sardessai.

Panaji, dated: 10-03-2017.



## AWARD

1. In Exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa, by Order dated 14-07-2015, bearing No. 28/38/2015-Lab/698 referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present dispute to this Labour Court-II, vide her order dated 20-07-2015.

*“(1) Whether the action of M/s. Mandovi Pellets (A Division of Chowgule and Company Private Limited), near Borim Bridge, Shiroda, Goa in denying rectification of the date of birth of Shri Prakash G. Naik, Operator, in service records of the company is legal and justified?”*

*“(2) If not, what relief the Workman is entitled to?”*

2. On receipt of the reference, a case was registered under No. IT/14/15 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 30-07-2015 at Exb-4. The facts of the case in brief as pleaded by the Workman are that he was initially employed with the Employer/Party II (for short "Employer") as 'Operator' w.e.f. 04-02-1978. He stated that his date of birth is correctly recorded in his birth certificate issued by the Government as 05-11-1959. He stated that his date of birth was wrongly recorded in the Employer's record as 05-11-1957 based on the true copy of the GDD Higher Secondary passing certificate. He stated that when he noticed the aforesaid mistake appearing in his HSC passing certificate, he approached the management of the Higher Secondary College and got it corrected as 05-11-1959 based on his birth certificate.

3. He stated that thereafter he made representation to the Employer, vide his letter dated 28-12-2014 along with corrected HSC passing certificate. He stated that however, the Employer refused to correct his date of birth in its record. He stated that he therefore wrote another representation to the Employer, vide his letter dated 22-01-2015. He stated that however, the Employer did not consider his request. He stated that he therefore raised an industrial dispute before the Asstt. Labour Commissioner, Ponda, Goa, through his union, vide letter dated 23-02-2015, which ended in failure.

4. The Workman contended that his correct date of birth is 05-11-1959 as recorded in his certificate of birth, school leaving certificate and SSC certificate. He submitted that the college management corrected the mistake appearing in the HSC passing certificate issued to him, by correcting his date of birth as 05-11-1959 in place of 05-11-1957 and hence, the Employer automatically ought to have corrected his date of birth in their record as 05-11-1959. He submitted that the action of the Employer in not correcting his date of birth as 05-11-1959 is illegal, unjustified and bad-in-law. The Workman therefore prayed that the action of the management of the Employer in refusing to correct his date of birth be declared as illegal and bad-in-law and direct the Employer to correct his date of birth as 05-11-1959. The Workman also prayed that the Employer be directed to continue his employment during the pendency of the present dispute.

5. The Employer filed its written statement on 03-09-2015 at Exb. 6. The Employer, as and by way of preliminary objections, submitted that the alleged dispute is not an 'industrial dispute' and that denial to rectify the date of birth in the service record of the Company is not an 'industrial dispute' and as such the reference deserves to be rejected summarily.

6. Without prejudice to the above, the Employer stated that the Workman was appointed as 'trainee' w.e.f. 02-02-1978. The Employer stated that after successful completion of training period, the Workman was absorbed as 'Asstt. Operator' w.e.f. 01-01-1980, vide its letter dated 14-03-1980. The Employer stated that the Workman had submitted a true copy of GDD HSC passing certificate alongwith application for employment form dated 04-02-1978, certifying that he has passed HSC examination in October, 1977 and his date of birth is recorded therein as 05-11-1957. The Employer stated that the Workman, while serving in the company, for such a long period of his tenure, never raised any objection nor made any representation to them for change in his date of birth. The Employer stated that it is only now just before his retirement, at the fag end of his career that vide his letters dated 13-03-2014 and dated 20-12-2014, received by them on 15-03-2014 and on 27-12-2014 informed them that he had not submitted his birth certificate at the time of joining and as per the birth certificate his correct date of birth is 05-11-1959. The Employer stated that the Workman submitted that the date of birth mentioned in his HSC certificate is wrong and was a result of error committed by the college

management and that the said date of birth has been subsequently corrected by the management. The Employer stated that Workman was informed vide letter dated 12-01-2015 and dated 05-02-2015 by them that the Certified Standing Orders do not permit correction of his date of birth at this stage as at the time of recruitment he had submitted documents on the basis of which his date of birth was recorded and as such they are unable to consider his request of correction of his date of birth and that he will retire from its service w.e.f. 30-11-2015.

7. The Employer stated that the Workman has not disputed that its service records recorded date of birth of the Workman on the basis of documents furnished by him at the time of his entry in the service. The Employer stated that the correction of date of birth of the Workman in the records of the college allegedly on error, cannot be accepted by them and such error cannot be the basis of correction of date of birth in its service records. The Employer stated that on the basis of the documents produced by the Workman, the birth recorded was accepted and treated accordingly for the purpose of deciding his age of retirement. The Employer stated that vide letters dated 12-01-2015 and dated 05-02-2015, they informed the Workman that it is not possible to correct the date of his birth as recorded in their records, which was recorded at the time of entry in service, especially at the fag end of his employment. The Employer stated that they made their position clear and rejected the request of the Workman for correction of date of birth. The Employer stated that the service regulations as incorporated in the Certified Standing Orders bars any claim made by a workman after the period stipulated therein. The Employer submitted that even otherwise, his request for correction of birth date is raised just before the retirement and hence could not be accepted. The Employer stated that any alleged errors or mistakes cannot be a ground for upsetting its records. The Employer stated that the judicial precedents also clearly laid down that service regulations has to be followed and in any event an employee is ought not to be followed to seek alterations in the date of birth at the fag end of his career. The Employer stated that the delay and latches is also a factor against the Workman and there is no reason for correction of date of birth. The Employer therefore denies that on the correction of date of birth by the college there ought to be automatic correction of the date of birth by the Employer.

8. The Employer stated that the overall performance of its plant from its inception till date is much below average. The Employer stated that the annual installed capacity of the plant is 1.8 million tons per annum but it has never produced 1.8 million tons pellets from inception till date. The Employer stated that the plant worked only 694 days from May, 2004 to March 2012 i.e. on an average 37 days p.a. and rest of the days it was shut down. The Employer stated that from 05-04-2012 till date, the plant is not in operation for a single day. The Employer stated that the manpower in the plant has substantially reduced from the time of inception. The Employer stated that it has not recruited any employees in the workman category in vacancies caused as a result of resignation/retirement/death. The Employer stated that any relief granted will place unfair financial burden on them i.e. already reeling under several financial constraints. The Employer finally submitted that its action is legal and justified and as such the relief prayed by the Workman be rejected by declaring that the Workman is not entitled to any relief.

9. Thereafter, the Workman filed his Re-joinder on 04-09-2015 at Exb. 7. The Workman, by way of his Re-joinder, reiterates and confirms all the submissions and averments made by him in his Claim Statement to be true and correct and denies all the statements and averments made by the Employer in its Written Statement, which are contrary and inconsistent with the statements and averments made by him. He stated that at the time of filling the forms under the Employees State Insurance Scheme (ESIC), he had submitted his birth certificate in which his date of birth is recorded as year 1959. He stated that the said birth certificate was certified and verified by the Employer. He stated that as the Employer has corrected the date of birth as 1959 in the ESIC record and he was issued identity card based on the said records submitted by the Employer. He submitted that in view of the correction made by the Employer in his ESIC record, he was under the belief that his date of birth is already corrected based on the said birth certificate. He submitted that in the year 2014, he came to know that his date of birth is not corrected as per the birth certificate produced by him and he was orally informed that his date of birth was recorded in his service record based on the date of birth recorded in the Higher Secondary certificate. He stated that he was told that unless it is corrected in the Higher Secondary certificate, it cannot be changed in the service record. He finally submitted that the record of the Employer clearly shows that it has accepted his date of birth as 05-11-1959.

10. Based on the pleadings filed by the respective parties, this court framed the following issues on 14-09-2015 at Exb. 10.

1. Whether the Workman/Party-I proves that his date of birth as 05-11-1957 appearing in his GDD HSC passing certificate is erroneous?
2. Whether the Workman/Party I proves that the action of the Employer in denying rectification of his date of birth in service records of the Employer is illegal and unjustified?
3. Whether the Employer/Party II proves that the present order of reference is not maintainable in law, in view of the preliminary objections raised in para (a) and (b) of the written statement?
4. Whether the Workman/Party I is entitled to any relief?
5. What order? What award?

11. My answers to the aforesaid issues are as under:

- |                        |                     |
|------------------------|---------------------|
| (a) Issue No. 1:       | In the affirmative. |
| (b) Issue No. 2:       | In the negative.    |
| (c) Issue No. 3:       | In the negative.    |
| (d) Issue No. 4 and 5: | As per final order. |

I have heard the oral arguments of Ld. Shri P. Gaonkar appearing for the Workman as well as Ld. Adv. Shri G. K. Sardessai appearing for the Employer.

12. Ld. Rep. Shri P. Gaonkar, representing the Workman, during the course of his oral arguments, submitted that the Workman was employed as Operator w.e.f. 04-02-1978. He submitted that at the time of his entry in the employment of the Employer, his date of birth was recorded as 05-11-1959. He submitted that in the year 2014, when the Workman came to know that his date of birth was overwritten and altered as 05-11-1957, he made a representation dated 20-12-2014 stating that his correct date of birth is 05-11-1959. He submitted that the Employer has altered his date of birth as 05-11-1957 instead of 05-11-1959. He submitted that his date of birth recorded in his GDD Higher Secondary passing certificate as 05-11-1957 was on account of typing error, which he got corrected and also produced along with application dated 20-12-2014 (Ex. 12). He submitted that ESIC card of the Workman (Exb. 23) clearly shows that his date of birth is shown as 05-11-1959. He submitted that the Workman was therefore supposed to be retired in the year 2017. He submitted that the Employer has however, illegally retrenched the services of the Workman

w.e.f. 30-11-2015 under the pretext of retirement. He submitted that the Employer has not paid the Workman his notice pay, retrenchment compensation and other legal dues at the time of termination of his services. He therefore submitted that the action of the Employer in terminating services of the Workman w.e.f. 30-11-2015 is illegal and unjustified and the Workman is therefore entitled for reinstatement with full back wages, continuity in service and consequential benefits thereof. In support of his oral contention he relied upon a judgment of Hon'ble Supreme Court of India in the case of M/s. Bharat Coking Coal Ltd. and Ors. v/s. Chota Birsra Uranw, reported in 2014 (4) SCR 887 and a judgment of Hon'ble High Court of Jharkhand in the case of Bacha Singh v/s. B.C.C.L. & ors., passed in writ petition No. 4094 of 2003.

13. Per contra, Ld. Adv. Shri G. K. Sardessai, representing the Employer, during the course of his oral arguments, submitted that admittedly the Workman was employed with the Employer as operator w.e.f. 02-02-1978. He submitted that at the time of joining the services of the Employer, the Workman had submitted a true copy of GDD Secondary and Higher Secondary education, Panaji, Goa, alongwith an application for employment dated 04-02-1978 certifying that he has passed HSSC examination in October, 1977 and his date of birth is recorded therein as 05-11-1957. He submitted that the Workman, while serving in the Employer Company for such a long period, just before his retirement at the fag end of his career, informed the Employer that he had not submitted his birth certificate at the time of joining and as per the birth certificate his correct date of birth is 05-11-1959 and that the date of birth appearing in his HSSC certificate is wrong and was a result of an error committed by the college management, which has been subsequently corrected by them. He submitted that the Workman requested that his date of birth for superannuation be considered as 05-11-1959 instead of 05-11-1957. He submitted that the Certified Standing Orders of the Employer do not permit correction of his date of birth at this stage, which was recorded at the time of his entry in the employment of the Employer. He submitted that delay and laches on the part of the Workman in approaching the Employer disentitles him to correct his date of birth. He submitted that in view of the aforesaid reasons, the Employer declined to make correction in its service record. He submitted that the said action of the Employer is just, fair and proper and in accordance with its Certified Standing Orders. In support of his oral contention he relied upon the following judgments:



- a) In the case of State of U.P. & Ors. v/s. Gulaichi (Smt.), reported in 2003 III CLR 168 of Hon'ble Supreme Court of India.
- b) In the case of State of Orissa and Ors. v/s. Ramanath Patnaik, reported in (1997) 5 SCC 181 of the Hon'ble Supreme Court of India.
- c) In the case of Union of India v/s. Harnam Singh, reported in (1993) 2 SCC 162 of the Hon'ble Supreme Court of India.

I have carefully perused the entire records of the present case. I have also carefully considered the oral as well as written submissions made by the respective parties.

#### REASONS

14. *Issue No. 1:* The Workman has produced on record his birth certificate (Exb.16) in support of his oral evidence. The said birth certificate of the Workman on record shows that his date birth is 05-11-1959. The Workman also produced on record his SSC passing certificate (Exb. 17) as well as leaving certificate (Exb. 45 (cross) issued by the Pragati Vidyalaya, Borim, Ponda-Goa. Both the said certificates on record clearly shows that the date of birth of the Workman as 05-11-1959. The Employer also did not dispute the aforesaid date of birth of the Workman. It is only in the HSC passing certificate of the Workman, his birth date is mentioned as 05-11-1957. The Workman corrected his aforesaid date of birth appearing in his HSC passing certificate as 05-11-1959 instead of 05-11-1957. Hence, it is held that the Workman proves that his date of birth as 05-11-1957 appearing in his HSC passing certificate was erroneous. The issue No.1 is therefore answered in the affirmative.

15. *Issue No. 2:* Undisputedly, the Workman was employed in the services of the Employer as trainee w.e.f. 02-02-1978. After successful completion of training period, he was absorbed as 'Asstt. Operator' w.e.f. 05-01-1980, vide letter of the Employer dated 14-03-1980. The Workman admitted that at the time of his joining in the services of the Employer, he had submitted a true copy of GDD HSC passing certificate alongwith application for employment form dated 04-02-1978 (Exb.33) certifying that he has passed HSC certificate in October, 1977 and his date of birth was recorded therein as 05-11-1957. The Workman also admitted that for the first time, he had requested the Employer to correct his date of birth as 05-11-1959 instead of 05-11-1957, vide his representation dated 21-12-2014 (Exb.12), which was erroneously recorded in his HSC passing certificate. The

Employer rejected the said request of the Workman, vide its letter dated 12-01-2015 (Exb.13), in terms of the provisions of its Certified Standing Orders applicable to the Workman. By the said reply, the Employer also informed the Workman that at the time of his joining in their services, he had produced a true copy of GDD Higher Secondary passing certificate, wherein his date of birth is mentioned as 05-11-1957 and that he had not submitted birth certificate, SSLC/school leaving certificate at the time of joining, though mentioned in the application form at Exb.33 and that his date of birth for superannuation should be considered as 05-11-1959 instead of 05-11-1957. In pursuance to the aforesaid letter of the Employer at Exb.13, the Workman addressed another letter dated 22-01-2015 (Exb.14) to the Employer stating that if the Employer is proceeding based on the date of his joining as 04-02-1978 and pay his all legal dues, than he would not claim the correction of his date of birth. By the said letter, the Workman once again requested the Employer to correct his date of birth as 05-11-1959 based on the original certificate of birth as well as school leaving certificate. Thereafter, the Mandovi Pallets Ltd. Workers Union raised a dispute on behalf of the Workman before the Asstt. Labour Commissioner, Ponda, Goa, vide its letter dated 23-02-2015 (Exb. 15).

16. Thus, the Workman, vide his letter dated 28-12-2014 (Exb.12) as well as letter dated 12-01-15 (Exb.13), requested the Employer to correct his date of birth as 05-11-1959 in their service records, which was erroneously recorded as 05-11-1957. The Employer objected for correction of date of birth in their service record as sought by the Workman on the ground that its Certified Standing Orders does not permit any employee to correct his date of birth at the fag end of his career and that delay and latches in applying for correction of date of birth disintitiled the workman for the same. It is therefore necessary to look into the relevant provisions of the Certified Standing Orders of the Employer, which governs the service conditions of the Workman.

17. Clause 5 of Certified Standing Orders of the Employer laid down "the record of age and other particulars of the workmen" and it reads as under:

#### "5. Record of age and other particulars

- (a) *The age of the workman as recorded by the Company at the time of his entry into services of the Company shall not at any time subsequently be disputed by the workman, subject to conditions laid down under Section 5 (b) and shall be the sole evidence of his age in relation to matters pertaining to his service.*



(b) Every workman at the time of entering services of the Company, shall for the purpose of proving his age produce one of the following documents which shall be treated as authentic.

(i) Birth Certificate from competent Authority such as Municipality, Panchayat or Registrar of Births or

(ii) His Matriculation Certificate granted by the Board of Secondary Education.

(iii) School Leaving Certificate or

(iv) In the absence of either of the aforesaid three categories of certificates, the opinion of Medical Officer of the Company regarding the candidate's age shall be taken as final and binding upon the candidate.

**Note:** Where the exact date of birth is not available and the year of birth is only established, then the 1st July of the said year shall be the date of birth.

(c) The particulars name, address and other information given by the workman to the Company at the time of the entering the services of the Company shall be binding on him and shall not be disputed by him at any time.

Thus, it is clear that the age of the Workman as recorded by the Employer at the time of entry of the Workman in their service shall not at any time subsequently be allowed to be corrected and shall be the sole evidence of his age in relation to matters pertaining to his service.

18. In the case of **State of U.P. & Ors. (supra)**, the Hon'ble Apex Court has held that "An application for correction of the date of birth should not be dealt with by the courts, tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by

any rule or order. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book"

19. In the case of **State of Orissa (Supra)**, before the Hon'ble Apex Court, the Respondent retired from service on 31-12-1976. The Respondent filed a suit against rejection of his representation for correction of his date of birth in 1981. The Hon'ble Apex Court while allowing the appeal filed by the Appellant has held that "When entry was made in service record and when he was in service, he did not make any attempt to have the service record corrected. Therefore, any amount of evidence produced subsequently would be of no avail. The High Court, therefore, has committed manifest error of law in refusing to entertain the second appeal".

20. In the case of **Union of India v/s. Harnam Singh (supra)**, the Hon'ble Apex Court has held that "the application for correction of date of birth, entered in the service book in 1956, for the first time made in September, 1991, was hopelessly belated. It had not been made even within the period of five year from the date of coming into force of Note 5 to FR 56 (m) in 1979. Is in action for all this period of about 35 years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct. The Tribunal, therefore, fell in error in issuing the direction to correct his date of birth.

It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals

*cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. A public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claim by him".*

Thus, it is settled law that the application seeking correction in the date of birth should be made within the time fixed by any rule or order and in the absence of such rule or order, it should be made within a reasonable time and that it shall not be allowed at the fag end of the services of the employee.

21. Applying the law laid down by the Hon'ble Apex Court, in the case in hand, the Workman sought correction of his date of birth for the first time vide his application dated 13-03-2014 at the fag end of his career and after prolong service of 35 years with the Employer. Clause 5 of the Certified Standing Orders of the Employer prohibits the Workman for correcting his date of birth in the service record especially at the fag end of his career. The said application of the Workman for correction of his date of birth in the service records of the Employer also suffers from delay and latches on the part of the Workman in approaching the Employer. In view of above, the Employer has rightly rejected the application of the Workman for correction of his date of birth by pointing out the provisions of its Certified Standing Orders. Hence, it is held that the action of the Employer in denying rectification of his date of birth in service records is just, fair and legal.

22. Ld. Rep. Shri P. Gaonkar, during the course of his oral arguments, submitted that the date of birth of the Workman was overwritten and altered as 05-11-1957 instead of 05-11-1959. Ld. Rep. Shri P. Gaonkar also pointed out para 3 of affidavit in evidence of the Workman, wherein it has been stated that the management unilaterally changed the date of birth of the Workman, by making overwriting in his employment form B, which was in possession of the Employer. However, I do not find any pleadings on the part of the Workman to that effect. Secondly, the aforesaid submission of Ld. Rep. Shri P. Gaonkar is contrary to the various representations made by the Workman on record for correction of his date of birth. It is for the first time the Workman has deposed the aforesaid alleged fact in his affidavit in evidence, which

appears to be an afterthought. Hence, I do not find any merits in the aforesaid submissions of Ld. Rep. Shri P. Gaonkar appearing for the Workman.

Ld. Rep. Shri P. Gaonkar also relied upon the following two judgments, one of Hon'ble Apex Court and another of Hon'ble High Court of Jharkhand.

23. In the case of **M/s. Bharat Coking Coal Ltd. and Ors. (Supra)**, before the Hon'ble Apex Court, there existed two sets of records of the Respondent's details, first being the form B register on one hand on which the date of birth was recorded to be 15-02-1947 and second being the Mining Sardar certificate and the school leaving certificate wherein the date of birth was recorded as 06-02-1950. In 1987, the National Coal Wage Agreement III being implementation instructions were put into operation for stabilizing service records of the employees. Pursuant to implementation, the Respondent made representation to the concerned Project Officer on 16-07-2006 for correction of the date of birth in the form B register in accordance with the Mining Sardar certificate and the same was rejected by the Appellant Company vide its letter dated 19-07-2006. The Hon'ble Apex Court has held that "as noted by us, the Respondent in 1987 on coming to know of the wrong recording of his date of birth in his service record from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service. We have further notice that the High Court duly verified the genuineness of the school leaving certificate on the basis of supplementary affidavit filed by Shri Dilip Kumar Mishra, Legal Inspector of the Appellant Company on 06-09-2010 before the High Court. It has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to be genuine. We have further noticed that implementation instruction No. 76 Clause (i) (a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving certificate to be correct provided such certificate was issued by the Educational Institution prior to the date of employment".

The facts of the aforesaid case are totally different than the facts in the present case and therefore the judgment of the Hon'ble Supreme Court are clearly distinguishable on facts.

24. In the case of **Bacha Singh v/s. BCCL and Ors. (supra)**, the Hon'ble High Court of Jharkhand, the Petitioner was appointed with the Respondent in the year 1965 as 'U/G Munshi'. He was supplied

a copy of the register and service sheet on 29-05-1987 in which his date of birth was recorded as 01-05-1943. On receipt of the same, the Petitioner made an application for correction of his date of birth as 28-02-1947 as per his matriculation certificate by making a representation dated 02-03-1994 and another dated 05-10-1998. The Hon'ble High Court has observed that it is clear that the Petitioner has a right to get his date of birth recorded in the service book, corrected on the basis of the matriculation certificate, which has been issued by a statutory authority. The Hon'ble High Court further observed that it cannot be said that the Petitioner has raised the dispute regarding his date of birth at the fag end of his service and that there is no laches of delay on the part of the Petitioner in moving before them.

The facts of the case before the Hon'ble High Court are also totally different from the facts of the present case and hence, the principles laid down by the Hon'ble High Court is not applicable to the case in hand.

It is therefore held that the Workman failed to prove that the action of the Employer in denying rectification of date of birth of the Workman in their service record is illegal and unjustified. The issue No. 2 is therefore answered in the negative.

25. *Issue No. 3:* The Employer, as and by way of preliminary objections filed in the present proceedings submitted that the alleged dispute is not an industrial dispute and that the denial to rectify the date of birth in the service record of the company is not an industrial dispute. The burden to prove the aforesaid issue is therefore on the Employer.

26. The term 'industrial dispute' has been defined u/s 2 (k) of the I.D. Act, 1947 and it means "any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons."

27. In the case in hand, admittedly, the Workman has raised the present dispute pertaining to the action of the Employer in denying him to correct his date of birth which is wrongly recorded in their service records. Thus, there exists a dispute between the employer and the workman pertaining to terms of employment, is an industrial dispute within the meaning of Section 2 (k) of the I.D. Act, 1947. It is therefore held that the Employer has failed to prove that the present order of reference

is not maintainable in law in view of the preliminary objection raised by them in para (a) and (b) of the written statement. The issue No. 3 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

#### ORDER

1. It is held that the action of M/s. Mandovi Pellets (A Division of Chowgule and Company Private Limited), near Borim Bridge, Shiroda, Goa in denying rectification of the date of birth of Shri Prakash G. Naik, Operator, in service records of the company, is legal and justified.
2. The Workman, Shri Prakash Naik, is not entitled to any relief.
3. No Order as to cost.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar)  
Presiding Officer,  
Labour Court-II.

#### Notification

No. 28/9/2017-LAB/225

The following award passed by the Labour Court-II, at Panaji-Goa on 03-03-2017 in reference No. LC-II/IT/18/2016 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Georgina Saldanha, Under Secretary (Labour).  
Porvorim, 10th April, 2017.

LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble  
Presiding Officer)

Case No. Ref. LC-II/IT/18/16

Mrs. Milena Rodrigues,  
Rep. by the Secretary,  
All Goa General Employees Union,  
Mukund Bldg., 2nd Floor,  
P. O. Box No. 90,  
Vasco-da-Gama, Goa. ... Workman/Party-I.

V/s

M/s. Umiya Builders and Developers,  
G-01, Ground Floor,  
Umiya "Quatro D",  
Commercial, Nr. Keshav Smruti School,  
Dabolim-Goa. .... Employer/Party-II.

Workman/Party-I remained absent.

Employer/Party-II represented by Adv. Shri E.O. Mendes.

Panaji, dated: 03-03-2017.

#### AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa, by Order dated 03-11-2016, bearing No. 28/30/2016-LAB/778, referred the following dispute for adjudication to the Labour Court II at Panaji, Goa.

- "1. Whether the action of the management of M/s. Umiya Builders and Developers, Chicalim, Goa, in dismissing Mrs. Milena Rodrigues, Office Assistant, from service, with effect from 11-08-2015, is legal and justified?
2. If not, what relief the Workperson is entitled to?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/18/2016 and a registered A/D notices were issued to both the parties. In pursuance to the said notice, the Employer/Party-II (for short "Employer") put in their appearance through Adv. Shri E.O. Mendes. However, the Workperson remained absent from the first date of hearing i.e. on and from 21-12-2016 without any justifiable cause, though duly served by registered A/D post. The Workperson was given ample opportunities to remain present and pursue her matter. The Workperson however failed to do so. Consequently no Claim Statement has been filed on behalf of the Workperson.

3. Heard Ld. Adv. Shri E.O. Mendes appearing for the Employer.

4. In the case of **Baldev Singh V/s The Judge, Central Government Industrial Tribunal & Labour Court & ors., reported in 2007 II CLR 685**, the Hon'ble High Court of Rajasthan by referring the judgment of Hon'ble Apex Court in the case of **Virendra Bhandri V/s Rajasthan State Road Corporation Ltd. & ors., reported in (2002) 9 SCC** observed as under:

".....a reference of certain Industrial Dispute was made to the Industrial Tribunal-cum-Labour

Court. The workman did not appear before the Tribunal, therefore, Tribunal held that there remains no Industrial Dispute. However, subsequently, the Appropriate Government again referred the dispute to the Tribunal on the same question and on this occasion, the Tribunal adjudicated the matter and made an award. The High Court held that the finding recorded by the Tribunal in the first reference amounted to an "award" and, therefore, second reference was incompetent. The Hon'ble Apex Court held that all that was stated was that the parties concerned had not appeared before the Tribunal and in such an event, the Tribunal should have noted its inability to record the finding on the issue referred to it, not that the dispute itself does not exist. When there is no adjudication of the matter on merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists as is opined by the Government, such a matter can be referred under Section 10 of the I.D. Act, as Industrial Disputes are preferred to the Labour Court or the Industrial Tribunal for maintenance of industrial peace and not merely for adjudication of the dispute between two private parties. Therefore, it was permissible for the Government to have made the second reference. ....".

The principle laid down by the Hon'ble High Court in its aforesaid judgment binds a precedent upon me. Applying the law laid down by the Hon'ble High Court in its aforesaid judgment, in the case in hand no pleadings have been filed by the Workperson as well as by the Employer before this court and as such I am unable to record the findings on the issue referred to me.

In the circumstances, I pass the following order:

#### ORDER

1. It is held that this court is unable to record the finding on the issue referred by the Appropriate Government.
2. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar)  
Presiding Officer,  
Labour, Court-II.



**Department of Law & Judiciary**

Law (Establishment) Division

**Certificate of Practice**

No. 8-7-2014-LD(Estt)(16)/474

In partial modification of Certificate of Practice dated 28-02-2014 issued under the provisions of Notaries Act, 1952 (Central Act 53 of 1952) and the Notaries Rules, 1956 made thereunder, Government of Goa is pleased to extend the area of practice as a Notary of Ms. Akshata M. Redkar, to State of Goa, under Rule 8A of the Notaries Rules, 1956, with immediate effect.

By order and in the name of the Governor of Goa.

*Trupti B. Manerkar*, Under Secretary (Estt.).

Porvorim, 10th April, 2017.

**Department of Personnel****Order**

No. 6/3/2002-PER(Vol.I)

Read: Order No. 6/3/2002-PER(Vol.I) dated 09-12-2016.

Whereas a proposal was referred to the Goa Public Service Commission for promotion on regular basis to Senior Scale of Goa Civil Service as per seniority;

And whereas the Departmental Promotion Committee meeting was held on 30-11-2016 by the Goa Public Service Commission, for considering eligible officers for promotion to Senior Scale of Goa Civil Service;

And whereas the Departmental Promotion Committee meeting recommended 29 Junior Scale Officers for promotion to Senior Scale and deferred the promotion of 04 Junior Scale Officers on account of non availability of Annual Performance Appraisal Reports of relevant year and were given 60 days for furnishing the Annual Performance Appraisal Reports;

And whereas based on the above recommendations, 29 Junior Scale Officers were promoted vide order read at preamble;

And whereas the Annual Performance Appraisal Reports of 04 Officers were made available to the Goa Public Service Commission for convening the fresh Departmental Promotion Committee meeting

for considering the deferred 04 Officers alongwith the Officers earlier recommended in the DPC dated 30-11-2016;

Now, therefore, on the recommendations of the Departmental Promotion Committee meeting held on 22-03-2017 conveyed by the Goa Public Service Commission vide its letter No. COM/II/11/42(4)/2016/557 dated 27-03-2017, the Governor of Goa is pleased to promote under Rule 31 of Goa Civil Service Rules, 2016, as amended from time to time, the Junior Scale Officers as given below at Sr. Nos. 4, 7, 9 & 19 to the post of Senior Scale, on regular basis in the Level 11 of Pay Matrix, in the following order of their merit with due regard to the seniority within their respective grading as on 09-12-2016:-

1. Shri Gopal Parsekar.
2. Shri Gurudas P. Pilarnekar.
3. Smt. Shabari Manjrekar.
4. Shri Meghanath P. Porob.
5. Shri Venancio Furtado.
6. Shri Narayan V. Prabhudessai.
7. Shri Agnelo A. J. Fernandes.
8. Shri Derrick P. Neto.
9. Shri Srinet N. Kotwale.
10. Shri K. V. Signapurker.
11. Smt. Pushpalata Arlekar.
12. Shri V. P. Dangui.
13. Shri Dipak Bandekar.
14. Shri Vikas Gaunekar.
15. Smt. Deepali Naik.
16. Shri Raju Gawas.
17. Shri Anthony D'Souza.
18. Smt. Sandhya Kamat.
19. Shri Damodar Morajkar.
20. Smt. Meena Naik Goltekar.
21. Smt. Laura Britto e Madre De Deus.
22. Smt. Irene Victoria Sequeira.
23. Shri Vassudev Shetye.
24. Shri Rajendra D. Mirajkar.
25. Shri R. K. Satardekar.
26. Shri Shamsunder Y. Parab.
27. Smt. Sneha S. Morajkar.
28. Shri Pravin M. S. Barad.
29. Shri Ashok V. Rane.
30. Smt. Upasana Mazgaonkar.
31. Shri Sabaji P. Shetye.
32. Shri Sanjeev C. Gauns Dessai.
33. Shri R. K. Halarnkar.

The Officers at Sr. No. 4, 7, 9 & 19 shall be fixed as per CCS (RP) Rules, 2016 and shall be entitled for the pay in the promotional post of Senior Scale

from the date they accept the post. The Officers shall continue to hold the post presently held by them.

By order and in the name of the Governor of Goa.

*Shashank V. Thakur*, Under Secretary (Personnel-II).

Porvorim, 10th April, 2017.

### Notification

No. 7/30/2014-PER

The Governor of Goa is pleased to order the allocation of work/Departments amongst the Secretaries to the Government as follows with immediate effect, until further orders:-

Sr. No.	Name & Designation	Department
1	2	3
1.	Shri Dharmendra Sharma, IAS (1988), Chief Secretary	1. PWD. 2. Transport. 3. Vigilance/Chief Vigilance Officer. 4. Home. 5. Personnel. 6. Tourism.
2.	Dr. Ranbir Singh, IAS (1991), Secretary (Forests)	1. Forest. 2. Environment. 3. Science & Technology. 4. Mines & Geology. 5. GAD. 6. WRD. 7. Education. 8. Addl. charge of Pr. Secretary to Governor.
3.	Smt. Padmini Singla, IAS (2002)	1. Child Care Leave.
4.	Smt. Padma Jaiswal, IAS (2003), Secretary (Co-operation)	1. Co-operation. 2. NRI Affairs. 3. Public Grievances. 4. Official Language. 5. Labour & Employment. 6. Member Secretary, Goa State Commission for Backward Classes. 7. Member Secretary, Goa State Commission for Protection of Child Rights.

1	2	3
5.	Shri Sanjay Goel, IAS (2004), Secretary (Power)	1. Power. 2. Non-Conventional Energy. 3. Panchayat. 4. Rural Development Agency. 5. Civil Aviation & Nodal Officer for ODF & Swatch Bharat Mission.
6.	Shri Daulat A. Hawaldar, IAS (2004), Secretary (Finance)	1. Finance. 2. Planning, Statistics & Evaluation. 3. Art & Culture. 4. Information & Publicity. 5. Archives. 6. Archeology. 7. Museums. 8. Women & Child Development. 9. Social Welfare. 10. Institute of Public Assistance & Provedoria.
7.	Shri P. S. Reddy, IAS (2004), Secretary (Administrative Reforms)	1. Administrative Reforms. 2. Factories & Boilers. 3. Tribal Welfare. 4. Gazetteer. 5. Printing & Stationary. 6. Legal Metrology. 7. Handicrafts, Textiles & Coir.
8.	Shri Sudhir Mahajan, IAS (2005), Secretary (Health)	1. Health. 2. Urban Development. 3. Industries, Trade & Commerce. 4. Revenue. 5. Law, Judiciary & Legislative Affairs.
9.	Shri B. R. Singh, IAS (2005), Secretary (TCP)	1. Town & Country Planning. 2. Housing. 3. Civil Supplies. 4. Sports & Youth Affairs. 5. Protocol. 6. Agriculture. 7. Animal Husbandry & Veterinary Services.

1	2	3	
10.	Shri Ameya Abhyankar, IAS (2007), Secretary (IT)	1. Information Technology. 2. Special Secretary (Finance Budget). 3. Director (PPP Cell). 4. Chief Executive Officer, Entertainment Society of Goa.	5. Adv. Ulhas Raikar, C-3/, Block 1, IIIrd floor, Skylark Apartments, Menezes Braganza Road, Panaji-Goa Member.
11.	Shri Govind Jaiswal, IAS (2007), Secretary (Ports)	1. Ports. 2. River Navigation. 3. Fisheries. 4. Sp. Secretary (Vigilance). 5. Craftsman Training & Skill Development.	6. Dr. Cacodkar Jagadish Anil, H. No. 188, Kakoda, Curchorem, Goa 403 706 Member. 7. Dr. Gomes Emidio Edward Romeo, Gomes Mansion, H. No. 150, Nr. Civil Court, Altinho, Mapusa-Goa 403 507 Member.
12.	Shri J. Ashok Kumar, IAS (2008), (Secretary to Chief Minister)	1. Secretary to Chief Minister with addl. charge of Director, Municipal Administration & Member Secretary, GSUDA.	8. Dr. Kamat Govind Ganashyam, S-26, Bldg. A 1, Jairam Complex, Nevgi Nagar, Mala, Panaji, Goa 403 001 Member. 9. Dr. Rataboli Padmanabh Vaman, 1605, Haliwada, Penha De Franca, Britona, Bardez, Goa 403 101 Member. 10. Dr. Volvoikar Dhanesh Tulsidas, 15 Oval Park, Azad Bhavan Road, Porvorim, Goa 403 521 Member.

By order and in the name of the Governor of Goa.

*Yetindra M. Maralkar*, Additional Secretary (Personnel).

Porvorim, 12th April, 2017.

### Department of Public Health

#### Notification

No. 3/2/2010-II/PHD/491

In exercise of the powers conferred by Section 3 of the Goa Medical Council Act, 1991, the Government of Goa is pleased to constitute the Goa Medical Council, comprising of following members namely:-

1.	The Director of Health Services	Ex. Officio Member.
2.	The Dean or Director, Goa Medical College	Ex. Officio Member.
3.	Dr. Rajeshwar Naik, Guru Sai Plaza, 1st floor, Next to Adarsh High School, Pajifond, Margao-Goa	Member.
4.	Dr. Steven Dias, Madhuban Complex, Taleigao-Goa	Member.

By order and in the name of the Governor of Goa.

*Smita S. Hede*, Under Secretary (Health).

Porvorim, 17th April, 2017.

### Department of Revenue

#### Order

No. 3/4/2016-RD/602

Read: Order No. 3/4/2016-RD dated 23-02-2016.

In continuation to the Order referred to above, the Government is pleased to accept the recommendation of Mamlatdar of Pernem Taluka & Administrator of Devalayas, Pernem-Goa, to extend the term of the ad hoc Managing Committee appointed vide above referred order till 25-06-2017 for carrying out the activities as mentioned in the above referred order, with effect from 25-02-2017.

No further extension will be granted to the ad hoc Managing Committee for complying Article 25 and the same should be complied within the time frame. The Administrator of Devalayas, Pernem will monitor the task given to ad hoc Managing Committee for time bound completion of the same, so that elections of Managing

Committee of Shree Bhagwati Devasthan, Parcem, Pernem, for triennium 2016-19 is conducted without further delay.

By order and in the name of the Governor of Goa.

*Anju S. Kerkar*, Under Secretary (Revenue-II).

Porvorim, 13th April, 2017.

#### Order

No. 35/17/2016-RD/641

In exercise of the powers conferred by Clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (Central Act 2 of 1899), as in force in the State of Goa, the Government of Goa hereby authorize the Company as specified in column (1) of the Schedule below, to consolidate the stamp duty chargeable under Article 26 of Schedule I-A of the said Act on the instrument as shown in column (2) of the Schedule below. The consolidated stamp duty of Rs. 1,50,000/- shall be deposited by the said Company in the State Bank of India, Treasury Branch, Panaji-Goa, within a period of seven days from the date of publication of this order in the Official Gazette.

#### SCHEDULE

Name of the Company	Particulars of instruments
1	2
Digisol Systems Limited, Plot L-7, Verna Industrial Estate, Verna, Salcete-Goa 403722	Thirty lac Debentures of Rs. 100/- each.

By order and in the name of the Governor of Goa.

*Sudin A. Natu*, Under Secretary (Revenue-I).

Porvorim, 18th April, 2017.

#### Notification

No. 32/3/2001-RD(6576)/601

Subject: Re-constitution of Goa Rehabilitation Board.

Ref.: Notification No. 32-3-2001/RD dated 11-09-2015.

The Government of Goa is pleased to re-constitute the Goa Rehabilitation Board (GRB) consisting of the Chairman and other Members in terms of Section 4 of the Goa Rehabilitation Board

Act, 2006 as follows. The terms of Office of Chairman and other Members under Section 5 (1) of the Goa Rehabilitation Board Act, 2006 will be for a period of 3 years from the date of their nomination/ appointment i.e. w.e.f. 13-04-2017.

Sr. No.	Name & address	Designation
1.	Smt. Alina Saldanha, MLA, Cortalim	Chairman.
2.	Finance Secretary of his nominee not below the rank of Under Secretary from Finance Department	Member.
3.	Secretary (Revenue)	Member.
4.	Collector (North)	Member.
5.	Collector (South)	Member.
6.	Member Secretary of the GRB	Ex officio Secretary.

This issues with the approval of the Government.

By order and in the name of the Governor of Goa.

*Anju S. Kerkar*, Under Secretary (Revenue-II).

Porvorim, 13th April, 2017.

#### Department of Science & Technology

#### Notification

No. 3-281-2016/STE-DIR/SWMC/08

Read: 1) The Goa Waste Management Corporation Act, 2016 (Goa Act 19 of 2016).

2) Order No. 3-281-2016/STE-DIR/841 dated 24-11-2016.

In pursuance to Section 4.1, 4.2 and 4.3 of the Goa Waste Management Corporation Act, 2016, (Goa Act 19 of 2016) of the State of Goa, the Government of Goa is pleased to constitute the Board of Directors of the Goa Waste Management Corporation with the following nominees with immediate effect:

- |  |             |
|--|-------------|
| 1. Chief Minister of Goa                       | — Chairman. |
| 2. Shri Michael Lobo, MLA, Calangute           | — Director. |
| 3. Secretary (Science & Technology)            | — Director. |
| 4. Director—Department of Science & Technology | — Director. |
| 5. Director—Department of Environment          | — Director. |



- |   |                      |  |
|---|----------------------|--|
| 6. Member Secretary, Goa State Pollution Control Board            | — Director.          | This is issued with the approval of the office of the Chief Minister vide Note No. 1-4-2017/CM/A/79 dated 5th April, 2017. |
| 7. Director–Department of Panchayats                              | — Director.          |  |
| 8. Director–Department of Municipal Administration                | — Director.          | By order and in the name of the Governor of Goa.   |
| 9. Ex Officio Joint Secretary, Department of Science & Technology | — Managing Director. | <i>Levinson J. Martins</i> , Director & ex officio Joint Secretary (Science & Technology).<br>Saligao, 12th April, 2017.   |

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